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THE
L A W S
RELATING TO
Landlords and Tenants;
OR,
Every LANDLORD and TENANT

HIS OWN
L A W Y E R;

CONTAINING
The whole Law respecting LANDLORDS, TENANTS, and
LODGERS, laid down in a Plain, Easy, and Comprehensive
Manner;

TO WHICH ARE ADDED
The most approved FORMS of NOTICES to quit, Directions
for making a DISTRESS, and for REPLEVYING GOODS
when illegally taken:

ALSO
MEMORANDUMS for letting HOUSES, LANDS, and APARTMENTS
by *Agreement*, or on *Lease*; and various PRECEDENTS of
LEASES, and other Useful DEEDS, as settled by the most
eminent COUNSEL.

THE SEVENTH EDITION:
With considerable Additions and Improvements, from the Reports of SAYER,
BURROW, BLACKSTONE, LOFFT, DOUGLAS, and the TERM REPORTS,
both in the King's Bench and Common Pleas, to the Commencement of
Easter Term, in the Thirty First Year of GEORGE THE THIRD.

By JOHN PAUL, Barrister at Law,
Author of the CONSTABLE, CHURCHWARDEN, OVERSEER, SURVEYOR,
and HIGHWAY GUIDE, and other Law Tracts.

REVISED AND CORRECTED
By GEORGE WILSON, Serjeant at Law.

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C

CH
I.

II.

III.

C O N T E N T S.

CHAP.

I.

INTRODUCTION.

II. *The DIFFERENT KINDS of ESTATE.*

1. *Fee Simple.*
2. *Fee Qualified.*
3. *Fee Conditional.*
4. *An Estate in Tail.*
5. *An Estate after Possibility, &c.*
6. *An Estate by Curtesy.*
7. *An Estate in Dower.*
8. *A Jointure.*
9. *An Estate for Life.*
10. *An Estate for Years.*
11. *A Tenancy at Will.*
12. *A Tenancy at Sufferance.*
13. *Copyholds.*
14. *An Estate in Coparcenary.*
15. *Estates in Gavelkind, &c.*
16. *Of Jointenants.*
17. *Tenants in Common.*
18. *An Estate in Mortgage.*
19. *An Estate by Elegit.*
20. *An Estate by Statute Merchant.*
21. *An Estate by Statute Staple.*
22. *Estates in ANCIENT DEMESNE.*
23. *An Estate in Remainder.*
24. *An Estate in Reversion.*

III. *The LAW of DESCENTS.*

1. *Definition of Descent.*
2. *Of Consanguinity.*
3. *The Seven Canons of Inheritance.*
4. *Descents by Custom.*
5. *Descents by Statute.*

C O N T E N T S.

CHAP.

IV. *The LAW of DEEDS and LEASES.*

1. *Definition of PURCHASE.*
2. *Definition of Leases.*
3. *Who may be Lessors.*
4. *Of the Words of Leases.*
5. *Of Covenants.*
6. *Of Powers.*
7. *Of Assignments*
8. *Precedents.*

V. *The LAW of ESTOVERS.*

1. *Definition of Estovers.*
2. *The several Kinds.*
3. *Who are intitled to Estovers.*

VI. *The LAW of RENTS.*

1. *To and by whom Rent is payable.*
2. *At what Place.*
3. *Of THE TIME of Payment.*
4. *Of THE DEMAND of Rent.*
5. *The Tender and Acceptance of Rent.*
6. *Of the Consequences of Non-Payment.*
7. *Of Notice to Quit.*
8. *Of double Rent.*
9. *Precedents.*

VII. *The LAW of DISTRESS for RENT.*

1. *Who may or may not Distrain.*
2. *Of what Things a Distress may be taken.*
3. *At what Time the Distress shall be taken.*
4. *Where the Distress shall be made.*
5. *How a Distress shall be disposed of by the Common Law.*
6. *How the Goods Distrained shall be disposed of by Statute.*

7. *Of*

C O N T E N T S.

CHAP.

7. *Of an irregular and excessive Distress.*
8. *Of Rescuing a Distress.*
9. *Of the Landlord's Remedy, where there is not sufficient to Distrain.*
10. *Precedents.*

VIII. *The LAW of REPLEVIN.*

1. *For and against whom Replevin lies.*
2. *For what Things Replevin lies.*
3. *The different Kinds of Replevin.*
4. *Out of what Courts Replevin issues.*
5. *Of the Pledges in Replevin.*
6. *Of the Writs and Process in Replevin.*
7. *Of the Declaration and Pleas in Replevin.*
8. *Of the Writ of Enquiry.*
9. *Of Costs in Replevin.*
10. *Precedents in Replevin.*
11. *Bills of Costs in Replevin.*

IX. *The LAW of EJECTMENT.*

1. *The Methods of Proceeding.*
2. *For whom and in what Cases it lies.*
3. *For what Things it lies.*
4. *Ejectment for Non-Payment of Rent.*
5. *The Declaration; Lease, Entry, and Ouster.*
6. *Service of Declaration.*
7. *Defence and Plea.*
8. *Evidence and Verdict.*
9. *Judgment and Costs.*
10. *Writ of Error and Execution.*
11. *Action for Mesne Profits.*
12. *Of bringing a Second Ejectment.*
13. *Practice and Precedents in Ejectment.*

X. *A COPIOUS INDEX.*

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THE
L A W S
RELATING TO
LANDLORDS AND TENANTS.

CHAPTER THE FIRST.

INTRODUCTION.

THE relation which subsists between *Landlord* and *Tenant*, or, to use a synonymous but more technical expression, the privity which subsists between *lessor* and *lessee*, not only comprehends a very important part of human negotiation and the concerns of domestic life, but occasionally gives rise to some of the subtlest questions of the *English law*.

Previous to the introduction of the *feodal tenures* into this country, during the reign of *William the Conqueror*, lands and tenements were the absolute or free property of their respective owners; but when that system of law was adopted, by the general assembly of the whole realm, the nation as it were surrendered up all its *allodial* or free lands into the king's hands, who restored them to the owners as a *beneficium* or FEUD, to be held to them and such of their heirs as they previously nominated to the king. In

B

consequence

See Sir Martin Wright's Treatise on English Tenures, p. 66.

Montesquieu's Spirit of Laws, b. 31. c. 8. ib.

2 Bl. Com. 50.

INTRODUCTION.

consequence of this change, it became a fundamental maxim and necessary principle, which, though in reality a mere *fiction*, still subsists in contemplation of law, "that the king is the universal LANDLORD and original proprietor of all the land in his kingdom, and that no man doth or can possess any part of it but what has mediately or immediately been derived as a gift from him." The thing holden therefore, whether it consist of land or houses, is stiled a *tenement*, the possessors thereof TENANTS, and the manner of their possession a *tenure*. THE TENANTS who held under the king immediately, when they granted out portions of their lands, became also LANDLORDS with respect to these inferior persons, as they were still TENANTS with respect to the king, who is stiled THE LANDLORD *paramount*, or above all; and thus partaking of a middle nature, were called *mesne* or middle lords. And in this manner are all the lands of the kingdom holden which are now in the hands of subjects. Avoiding therefore, as foreign to our present purpose, a detail of the several species of tenures introduced with the feudal system, we shall content ourselves with observing, that the slavery and oppression which attended it was at length happily done away by the statute *Charles the Second (a)*, which reduced all tenures in general, except *Frankalmoin*, *Grand Sergeantry* and *Copyhold*, to a well known species of tenure called free and *Common Socage*; and proceed to describe,

(a) 12 Car. 2.
c. 24.

FIRST. The several kinds of tenures or estates now in use in this kingdom.—SECONDLY. The modes in which a title to an estate may be acquired by *discent*.—THIRDLY. The several ways in which an estate may be *purchased* or conveyed by grant, *lease*, &c.—FOURTHLY. The law of estovers.—FIFTHLY. The law respecting the receipt and payment of *rents*, issuing from such estates.—SIXTHLY. The means of recovering such rents by *distress*, or otherwise.—SEVENTHLY. The law and practice of *replevin*.—EIGHTHLY. The law and practice of *ejectments*.—NINTHLY. The forms of agreements for letting houses, apartments, &c. The forms of leases and other useful precedents. The forms of making memorials of leases, annuities, and other deeds, and of the manner of regulating the same.

CHAPTER THE SECOND.

The different Kinds of Estates.

I. **A** **FEE-SIMPLE**, is an estate of inheritance whereby a person is seised of lands, tenements or hereditaments, *to hold to him and his heirs for ever*, generally, absolutely, and entirely; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. It is the most perfect tenure of any, when unincumbered with judgments, statutes merchant, statutes staple, recognizances, mortgages, wills, pre-contracts, bargains and sales, feoffments, fines, amerciaments, jointures, dowers, or fraudulent conveyances. But although a *fee-simple* is the greatest interest which, by our law, a subject can possess in any thing capable of property, because it may in fact last for ever, yet it may be forfeited for *treason* or *felony*. To constitute an estate in *fee* or of inheritance, the word "*heir*," is necessary in the grant or donation; for, if land be given to a man for ever, or to him and his assigns for ever, this vests in him only an estate for life; but this rule does not extend to devises by will, nor to fines and recoveries, nor to grants of lands to sole corporations and their *successors*, nor to the case of the king; for a fee-simple will vest in him, without the words, "*heirs*," or "*successors*," being in the grant. The general rule, however is, that the word "*heirs*" is necessary to create an estate of inheritance.

Co. Lit. 1.
2 Inst. 501.
4 Inst. 192.
Plowd. 498.
Wright's Tenures 58. 137.
2 Bl. Com. 48.

II. A **FEE QUALIFIED**, is such a freehold estate as has a qualification subjoined to it, and which therefore must determine whenever the qualification is at an end; thus if an estate be granted to a man and his heirs *tenants of the manor of Dale*, the moment his heirs cease to be tenants of that manor, the grant is entirely defeated, and the estate gone.

Co. Lit. 27.

III. A **FEE CONDITIONAL**. This estate was, at the common law, a fee restrained to some particular heirs exclusive of others, as to the heirs *of a man's body*, or to the heirs *male of his body*, in which cases it was held that as soon as the grantor had issue born, the estate was thereby converted into fee-simple, at least so far as to enable him to sell it, to forfeit it by treason or to charge it with incumbrances.

Plowd. 251.
Co. Lit. 19.
1 Co. 103.

(a) 13 Edw. 1.
c. 1. commonly
called the sta-
tute of West-
minster the
Second.

But the statute *de donis* (a) having enacted, that such estates so given "to a man and the heirs of his body," should at all events go to the issue, if there were any, or if none, should revert to the donor, it was held that the donee had a new kind of particular estate which the judges denominated

Co. Lit. 186.
2 Inst. 331.
7 Co. 38.

IV. AN ESTATE IN TAIL; which is created by force of the above-mentioned statute of *Westminster*. Estates tail are either *general* or *special*. TAIL GENERAL, is where lands or tenements are given to one, and to the heirs of his or her body, lawfully begotten: But where lands or tenements are settled on a man and his wife, and the heirs of their bodies between them two, lawfully to be begotten, this is a tenancy in SPECIAL TAIL. This tenure in *special tail* may be varied, to the heirs male or female, according to the will of the donor, in whom the *fee-simple* is vested. An estate in *tail* may be barred by a common recovery; and if the tenant in *tail general*, or *special*, die without issue, the *fee-simple* reverts to the donor, or his lawful heirs.

Co. Lit. c. 2.
Lit. § 32.
1 Roll. Rep.
184.
11 Co. 80.
Co. Lit. 28.

V. AN ESTATE AFTER POSSIBILITY OF ISSUE EXTINGUISHED. When an estate is granted to a man and his wife in *special tail*, if one of them die before they have issue, the survivor is *tenant in tail after possibility of issue extinct*; or if they have issue, and such issue die without issue, this tenancy remains in the surviving donee. This estate must be created by the act of God, viz. the death of that person out of whose body the issue was to spring; and not by limitation of the party; *ex dispositione legis*, and not *ex provisione hominis*: a possibility of issue is always supposed to exist in law, even though the donees be each of them a hundred years old. This tenant is not punishable for waste, but he forfeits the estate by an alienation in *fee-simple*; he may, however, exchange with a tenant for life; for, in general, the law looks upon this estate as equivalent to an estate for life only.

Lit. § 52.

VI. AN ESTATE BY THE COURTESY. If a man marry a woman seized of lands or tenements in *fee-simple*, or in *general fee-tail*, or if his wife be heiress thereto in *special tail*, and he have a child by her, male or female, born alive; he shall, during his life, hold the said lands or tenements, during his life, as tenant by the courtesy of *England*; and although the child or children die as soon as born, yet if such issue were heard to cry, or if he can bring sufficient testimony that such children or any one of them were

born alive, he shall hold the lands during his life by this *courtesy*. To make a tenancy by the courtesy there are four things necessary, viz. 1st. Marriage, which must be canonical and legal. 2d. Seisin of the wife; which must be actual and not merely a bare right to possess the lands. 3dly. Issue; which must be born alive during the life of the mother. 4thly. The death of the wife; for although by the birth of a child the husband become *tenant initiate*, and may do many acts to charge the lands, yet his estate is not *consummate* till the death of the wife. This tenure is peculiar to this country. (a)

(a) Lit. 554.
Sed vide Craig
b. 2. c. 19. §
4. that it pre-
vails in Scot-
land when it is
called *curialitas*.

Co. Lit. 31.
Wright's Ten.
193.

VII. AN ESTATE IN DOWER. A woman who marries a man seised of lands or tenements in *fee-simple*, or in *general tail*, or who is heir in *special tail*, shall after his death, whether he leave issue by her or not, have her *third-part* of all such lands as her husband was seised of at any time during the coverture, as *tenant in dower*, to hold for the term of her natural life, provided she be above *nine years* of age at her husband's death: She must be the actual wife of the party at the time of his decease, for although a *separation* only from bed and board will not destroy dower, yet if she be *divorced* from the bond of marriage she shall not be endowed; and by the statute 13 *Edw. 3. c. 34.* if a woman elope from her husband and live with an adulterer, she shall lose her dower unless her husband be voluntarily reconciled to her: By 5 & 6 *Edw. 6. c. 11.* also, the widows of *traitors*, but not the widows of *felons*, are debarred of dower. A woman may also be debarred of dower by levying a fine, or suffering a recovery, of the lands during her coverture, or by 6 *Edw. 1. c. 2.* may forfeit it by alienating the lands assigned. *Custom* varies this tenure: in some places she is intitled to *half* the produce of the estate, in others the *whole*, which she claims as *tenant in dower* to her husband's estate. The custom in *Kent* is, that the wife shall have half the produce of the husband's lands while she remains a widow, and without a child, but as soon as she marries again, she loses all. If a man marry a woman having lands, &c. he has the same privilege while he remains a widower, but no longer.

VIII. JOINTURE. By 27 *Hen. 8. c. 10.* commonly called the statute of uses, *dower* may be barred by a *jointure*, or by conveying a *joint estate* to husband and wife and his heirs, or to the heirs of their two bodies, or of one of their bodies, or to them for their lives, or for the wife's

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life :

Wood's Inst.
123.
Co. Lit. 31.
F. N. B. 150.
Pigot on Reco-
veries 66.
2 Bl. Com. 137
1 Cases in
Chan. 181.

life: But to make a perfect jointure *four things* must be observed, 1. The jointure must take effect immediately on the death of her husband. 2. It must be for *her own life* at least, and not *pur autre vie*, or for any term of years, or other smaller estate. 3. It must be made to herself and not to any in trust for her. 4. It must be made, and so in the deed particularly expressed to be, in satisfaction of her whole dower, and not of any particular part of it (a); and it is provided by the same statute that if the jointress be evicted of her jointure she shall be *endowed* of so much of the residue of her husband's lands, as she was dowerable of at common law, as far as the lands from which she so evicted shall amount to. And if the jointure be made to her *after* marriage she may either accept or refuse it and insist upon her dower at common law.

(a) See the case of Kirkman v. Thomson. Cro. Jac. 474. Cruise 160.

Co. Lit. 41, 42.
2 Bl. Com. 120.
3 Co. 20.
Hayward on Elections 58.

IX. ESTATE FOR LIFE. A person holding lands or tenements for his *own life*, or for the term of another's life, viz. *pur autre vie*, he, as lessee of the said lands or tenements, is *tenant for life* therein, and the freehold vests in him. A grant to a man of "the manor of Dale," generally, without defining any specific estate, creates an estate for life, and if it do not mention for what estate, it shall be construed for the life of *the grantee*; so a grant to a woman "during her widowhood," or to a man "until he be promoted to a benefice" shall be considered as an estate for life, until the contingency happens; for the time being uncertain, in these and similar cases, they by possibility may last for life: This estate is in law considered as the lowest kind of freehold. A *tenant for life* is punishable for waste, and may commit a forfeiture; and by 4 and 5 Anne all warranties made by him descending to any person in reversion or remainder, are void. But he is intitled to *eschevers*, (b) and his executors or administrators shall have the *emblements* or profits of the crop, if he die before harvest, but not if the estate be determined by his *own act*; his lessee, however, shall even in that case have them, for the act of the tenant shall not prejudice his innocent lessee: (c) and by 11 Geo. 2. c. 19. § 15. the executors or administrators of tenant for life, shall, on his death, recover of the lessee (d) a rateable proportion of the rent from the last day of payment to the death of such lessor; which they could not do before at common law.

(b) Vide post c. 4.

(c) Vide post c. 3.

(d) See 8 Ann c. 14. s. 6. as to distress for the rent arrear, post c. 6.

Co. Lit. 44.
2 Bl. Com. 140.

X. TENANT FOR YEARS. A man demiseing lands, tenements, &c. to another for a limited number of years, the lessee

lessee is, in law, considered as a *tenant for years*, provided he enter on the premises by virtue of such lease. This tenancy may be created by word of mouth, and is called in law a *parol lease*, which binds the lessor so long as the same was agreed for. (a) If the lease be but for half a year, or a quarter, or any less time, the lessee is still considered as a *tenant for years*; a year being the shortest term which the law in this case takes notice of: and indeed every estate which must expire at a period certain and prefixed is an estate for years, and is therefore frequently called a *term*; this estate therefore must have a certain beginning and end: but *id certum est quod certum reddi potest*; therefore if a man make a lease for so many years as *J. S.* shall name, it is a good lease for years, for though at first uncertain, yet when *J. S.* hath named the years it is reduced to a certainty: and if no day of commencement be named in the creation of this estate, it begins from the making or delivery of the lease.

XI. TENANT AT WILL is where lands are demised to another *To hold* to him at the *will* of the lessor; and by force of this demise the lessee becomes possessed of such lands, &c. This tenancy is no longer durable than while the lessor or lessee pleases; for the lessor, in this case, cannot oblige the lessee to continue on the lands against his will, and therefore if either dislike, he may give the other *legal notice*, and so determine the will; for the holding here is reciprocal. In all cases (a) of leases at will of lands to hold from *year to year*, and so for as long time as both parties shall please, the landlord, before he can have title to bring an ejectment against the tenant at will, must give the tenant *half a year's notice* to quit possession of the farm. And the like notice is necessary as to *houses* let at will, unless there be some usage or custom (of the place or district where the house is situate) to give a shorter or other kind of notice to quit; and it must, in this case, be *half a year's* notice, for *six months* notice is not sufficient, and the notice must expire at the time when the tenancy commenced (b).

Co. Lit. 56.
2 Bl. Com. 145.

(a) Determined by eleven judges on the motion of Gould, J. present Ld. Mansfield and Ld. Ch. J. De Grey.

(b) Determined Easter Term

26 Geo. 3. 1 Term Rep. 159.

(a) By 29 Car. 2. c. 3. All leases, estates, interests of freehold, terms of years or any uncertain interest therein, created by livery and seisin only, or by parol, and not put in writing and signed by the parties, shall have the force and effect of

leases or estates at will only, except all leases not exceeding the term of three years from the making thereof, in which the rent reserved shall amount to two-thirds of the improved value.

Co. Lit. 57.

2 Bl. Com. 150.

5 Mod. 384.

XII. TENANT AT SUFFERANCE. If a man hold lands of another by lease for a term of years, and keep possession thereof after the term is expired, such person in law is called a *tenant at sufferance*; this tenancy is begot by the *laches* of his lessor. But by the statute 4 Geo. 2. c. 28. in case any tenant for life or years, or other person claiming under, or by collusion with such tenant, shall wilfully hold over after the determination of the term, and demand made in writing for recovering the premises, the person holding over shall pay for the time he continues at the rate of double the yearly value of the lands so detained.

2 Bl. Com. 147.

Co. Lit. 58.

3 Co. 7.

1 Rol. Abr.

498.

XIII. COPYHOLDS. Persons having lands and tenements *To hold* to them and their heirs in *fee-simple*, *fee-tail*, or for the *term of their lives*, or on any other condition at the will of a superior lord, after the custom of his manor, such persons are called COPYHOLDERS, or *tenants by copy of court-roll*; a copy of such court-roll or entry in the court books of the said manor (of which the tenant has a transcript signed by the steward) being all the evidence or title they have to shew for their right to the said lands, &c. *Copyhold tenures* are derived from the ancient tenure of *pure villenage*, and vary in different parts of *England*, according to the custom of the respective manors to which they belong; and it is held, that a tenant of a copyhold estate is as well inheritable therein as one that has a *fee-simple*, provided he comply with the custom of the manor, and perform and pay his services due and of right belonging to the lord thereof.

Lit. § 309.

2 Bl. Com. 189.

Co. Lit. 163.

XIV. COPARCENARY. Tenants in *co-parcenary* are of two kinds, *viz.* PARCENERS at *common law*, and by *custom*. By the course of the common law, when a party, either male or female, is seised of an estate in *fee-simple* or *fee tail*, and dies, leaving issue only daughters, the estate descends to them all equally as co-heirs; or if a man, seised of lands, die without issue, the estate descends to his sisters as co-heiresses; or if he has no sisters, and it descend to his aunts, they are also co-heiresses, or *tenants in co-parcenary*. Where there are several co-parceners, and one dies, leaving issue before partition made, the share or interest of the deceased descends to her issue; and if one die, without issue, the share descends equally to the co-heirs. Concerning partition of land in *co-parcenary*, *joint-tenancy*, and *tenancy in common*, see 8 and 9 W. 3. c. 3. and 7 Ann. c. 18.

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XV. PARCENERS BY CUSTOM. In *Kent*, and some few other places in *England*, and in *North Wales*, if a man is seised in *fee-simple*, or *fee-tail*, of an estate held by the tenure of *gavel-kind*, and has issue, the sons after his death shall be all co-heirs, and equally inherit those lands, &c. and are called *parceners by custom*.

Co. Lit. 176.

b.

1 Sid. 136.

Plow. 129.

XVI. JOINT-TENANTS. When a man, seised of an estate in *fee*, does enfeoff several persons *To hold* to them and their heirs, or *To hold* to them for the term of their natural lives, or for the life of another, and they become seised by virtue thereof; or if several persons disleise another of an estate to their joint use, such are termed *Joint-tenants*. The nature of this tenure is, that the whole estate passes to the survivor in whom it vests in *fee-simple* to him and his heirs. This survivorship takes place among all persons who have joint-estates or possession with others in chattels real, or personal, as lessees, &c. Where there are several joint-tenants for life, and one grants a term out of his moiety for a certain, annual rent, but dies before such term is expired, it holds against the survivor; but the rent ceases. Among co-heirs or co-parceners the rent does not cease.

Co. Lit. 180.

2 Inst. 527.

XVII. TENANTS IN COMMON. Persons who have lands, &c. by several, and not joint titles, and the severalty not distinguished whether in *fee-simple*, *fee-tail*, or *for life*, are deemed *Tenants in common*. If lands be conveyed by lease and release to the use of all and every the children of J. G. and their heirs equally to be divided amongst them; these words "*equally to be divided*" make a tenancy in common. If a tenant in common alien his share to another in fee, or give it to another in tail, such alienee or donee becomes tenant in common with the other joint-tenants: and if he prove survivor, is intitled to the fee. The same doctrine which holds among tenants in common, in estates in fee-simple, or fee-tail, holds also between tenants for life. Where two persons have held lands in common undivided, one half from his ancestors from whom the estate descended to them undivided from time immemorial, such are tenants in common by *title of prescription*. The essential difference between joint-tenants, and tenants in common, consists in this, joint-tenants hold the estate by one joint title, and in one right; and *tenants in common* hold by several titles, or by one title and several rights; whereas a joint-tenant enjoys one joint freehold, and tenants in common several. (a)

Co. Lit. 189.

2 Will. 341.

Cowp. 660.

1 Term Rep.

759.

(a) The possession of one tenant in common shall be considered as the possession of the other.
Cowp. 219.

Co. Lit. 205.
Wood's Inst.
138.
2 Bl. Com. 157.
Precedents in
Chancery 71.
2 Peer Wms.
404.
3 Bl. Com.
435.
See this subject
treated with
great perspicui-
ty by Mr.
Powell in his
Law of Mort-
gages.

(4) Ketch v.
Hale Dougl. 22,
23 and 1 Term
Rep. 383.

2 Bl. Com. 161.

2 Bl. Com. 160.
Wood's Inst.
141.

XVIII. MORTGAGE ESTATE. The word mortgage is derived from the word *mort* dead, and *gage* a pledge, and signifies a pawn of land, &c. for money borrowed, upon condition that the land, &c. shall become the property of the lender, if the money be not repaid at the day agreed. He that mortgages or pawns is called the *mortgagor*, and he to whom the mortgage is made is called the *mortgagee*. This estate is usually made by a lease for a long term of years, or by assignment of a subsisting lease, or by a conveyance, by lease and release, of the fee itself; and while the creditor thus holds the land, he is called *Tenant in mortgage*: but it is generally agreed that the *mortgagor* shall hold the land, &c. until he fail to redeem it by payment of the money borrowed; and even if he fail, the court of chancery will in its equity allow him a further time for *redemption*; for as the mortgagee cannot sell the estate without a bill to *foreclose*, the court will oblige him to do what is right, under all the circumstances of the case. The legal interest of a mortgagor in possession is inferior to that of a mere strict tenant at will, and therefore notice to quit is not necessary on this species of estate to support an ejectment; neither has the mortgagee any right to make leases, and therefore whoever wishes to be secure when he takes a lease, should examine the title deeds (a). By 7 Geo. 2. c. 20. if any action shall be brought, or bill filed, to compel payment of money on mortgages, and the mortgagor shall pay principal, interest, and costs into court, such suits shall be immediately determined, and cease.

XIX. ESTATE BY ELEGIT, is an estate of which a creditor is put into possession by the sheriff, on the writ of execution called, an *elegit*, after having obtained a judgment at law against the owner of such estate. The creditor in this case is put in possession of *one half* his debtor's lands and tenements, to be held, occupied, and enjoyed, until his debt and damages are fully paid; and during the time he so holds them, he is called *Tenant by elegit*.

XX. ESTATE BY STATUTE MERCHANT is created by virtue of a bond, or obligation of record, entered into pursuant to the statute 31 Edw. 1. *de mercatoribus*, conditioned that if the debtor pay not the debt at the day, execution may be awarded upon body, land and goods, and that the obligee, or creditor, may hold the whole lands to him, his heirs and assigns, till the debt be levied and paid.

The Law of Estates.

II

XXI. AN ESTATE BY STATUTE STAPLE is also obtained by execution on a bond of record acknowledged, pursuant to 27 *Edw. 3. c. 9.* by virtue of which the obligee may possess himself of the lands of his debtor, until the amount of the bond be paid.

4 Inst. 238.
Wood 141.

XXII. ESTATES IN ANCIENT DEMESNE, are certain manors which were the ancient *demesnes* of THE CROWN, and therefore not subject to the feudal system of tenure.

1 Com. Dig.
346.

XXIII. AN ESTATE IN REMAINDER, is the residue of an estate in land depending on a particular estate, and created together with the same. A *particular estate* is that which is derived from or out of a general or greater estate: as if a man, who is seised in *fee-simple*, grant his estate to another for life, or let it for term of years, with *remainder* over to a third person in fee, or for life, or in tail.

Co. Lit. 49.
143.
2 Bl. Com.
164.
Wood's Inst.
147.

XXIV. AN ESTATE IN REVERSION, is the residue of an estate left in the grantor to commence in possession after the determination of some *particular estate* granted out by him. Thus if a man make a gift in tail, and the donee die without issue, the reversion of the fee is, without any special reservation, vested in the donee by act of law: and so also the reversion, after an estate for life, for years, or at will, continues in the LANDLORD or lessor, after the TENANT's estate is determined or expired.

Skin. 341.
3 Peer Wms.
258.
Co. Lit. 22.

CHAPTER THE THIRD.

The Law of Descents.

DESCENT, or *hereditary succession*, is the title whereby a man, on the death of his ancestor, acquires his estate by right of representation as his heir at law: AN HEIR therefore is he upon whom the law casts the estate immediately on the death of the ancestor; and an estate so descending to the heir, is called THE INHERITANCE. The doctrine of descents or law of inheritances in *fee-simple*, is a point of the highest importance, and depends on the nature of *kindred*, and the several degrees of *consanguinity*, which is defined to be "the connection or relation of persons descended from the same stock or common ancestor." This consanguinity, or descent,

Co. Lit. 18.
2 Bl. Com.
201.

Co. Lit. 10.
1 Vent. 415.
Wood's Inst.
211.

descent, is either *lineal* or *collateral*. Lineal consanguinity is a descent downwards in a right line, as from grandfather to father, and grandson. Collateral is a descent which springeth out of the side of the whole blood, as grandfather's brother, father's brother, &c. The following are the rules or canons of inheritance according to which estates are transmitted from THE ANCESTOR TO THE HEIR.

The first canon of inheritance.

Lit. 63.
Bracton b. 2.
fo. 65.
Britton c. 119.
fo. 271.
Fleta b. 6.
c. 1. f. 14.

1st. "Inheritances shall lineally *descend* to the issue of the "person last actually seized *in infinitum*, but shall never "lineally *ascend*." Therefore if there be grand-father, father, and son, and the father purchase land and die, his son shall succeed him as heir, and not the grand-father, to whom the land shall never ascend, but shall rather escheat to the lord. So also if the son purchase land and die without issue, his father cannot inherit, but it must descend to the heirs on the part of the father, *viz.* the father's brother. But though the uncle is preferred before the father in descent from the son, yet if the uncle enter after the death of the son, and die without issue, the father shall inherit to the uncle.

The second canon of inheritance.

Hale's Hif.
C. L. 235.
2 Bl. Com. 213.

2d. "The *male* issue shall be admitted before the *female*." Thus if a man hath two sons and two daughters, and die, his eldest son shall first inherit, and if he die without issue, then his second son shall inherit in preference to the two daughters: thus also if *A.* has issue two sons, *B.* and *C.*; and *B.* has issue a son and daughter, *D.* and *E.*; and *D.* the son has issue a daughter *F.*; and *E.* the daughter has issue a son, *G.*; neither *C.* nor any of his descendants shall inherit so long as there are any descendants from *D.* and *E.*; neither shall *E.* the daughter, nor any of her descendants inherit so long as there are any descendants from *D.* the son, whether they be male or female.

The third canon of inheritance.

Hale's Hif. C.L.
238.
Co. Lit. 13. a
Glanvil, b. 13.
ch. 3.

3d. "Where there are two or more males in equal degree, the eldest only shall inherit, but the females altogether." Thus if a man hath two sons and two daughters, the eldest son shall alone succeed in exclusion of the second son and both the daughters; but if both the sons die without issue *before the father*, the daughters shall inherit the estate as coparceners.

The fourth canon of inheritance.

Hale's Hif.
C. L. 236, 237.
2 Bl. Com. 217.

4th. "The lineal descendants *in infinitum* of any person deceased shall represent their ancestors; that is, shall stand in the same place as the person himself would have done had he been living." Thus the child, grand-child, or great grand-child, either male or female, of the eldest son,

son, succeeds before the younger son, and so *in infinitum*: and these representatives shall take neither more nor less, but just so much as their principals would have done: therefore if a man has two daughters, and the eldest die in the father's life, leaving six daughters, and then the father dies, *his* younger daughter shall have an equal share with *her* six nieces; and so through all the degrees of succession by right of representation, the right of proximity is transferred from the root to the branches, and gives them the same preference as the next and nearest of blood.

5. "On failure of lineal descendants, or issue of the person last seized, the inheritance shall descend to the blood of the first purchaser, subject to the three preceding rules." The first purchaser is he who first acquired the estate to his family, whether the same was transferred to him by sale, or by gift, or by any other method, except only that of descent. Thus if *A.* purchase land, and it descend to *B.* his son, and *B.* die seized thereof without issue, whoever succeeds to this inheritance must be of the blood of *A.* the first purchaser of this family. Thus, also if a son purchase land, and die without issue, it shall descend to the heirs of the part of the father; and if he have none, then to the heirs of the part of the mother (*a*). But if the father purchase lands, and they descend to the son, who dies without issue, and without any heir on the part of the father, it shall not descend in the line of the mother, but *escheat*. If there be none of the blood of the grand-father, yet it may resort to the blood of the grand-mother, her blood being as well of the blood of the father, as the mother's consanguinity is of the blood of the son. If the grand-father purchase lands, which descend to the father, and from him to the son, if the son enter and die without issue, his father's brothers or sisters, or their descendants, or, for want of them, his great grand-father's brothers or sisters, or their descendants, or, for want of them, any of the consanguinity of the great grand-father, or brothers or sisters of the grand-mother, or their descendants, may inherit; the consanguinity

The fifth canon of inheritance.

Co. Lit. 12.

2 Bl. Com. 221.

(a) See 2 Bl. Com. 221, 222, 229. That all lands granted in fee simple, are at this day held as a feud of indefinite antiquity, and are inheritable as if they had descended from some uncertain indefinite ancestor, and therefore any of the collateral kindred of the real modern purchaser,

(and not his own offspring only) may inherit them, provided they be of the *whole blood*; for all such are in judgment of law likely enough to be derived from their indefinite ancestor, but those of the *half blood* are excluded for want of the same probability.

of the great grand-mother being the consanguinity of the father. But none of the line of the mother or grand-mother, *viz.* the grand-father's wife, shall inherit; for they are not of the blood of the first purchaser. NOTE. The same rule holds in purchases in the line of the mother or grand-mother; they shall always keep in the same line that the first purchaser settled them in. But it is not necessary that he who inherits be always *heir* to the purchaser; it is sufficient if he be of his *blood*, and *heir* to him that was *last seised*; for if the father purchased lands which descended to the son, who dies without issue, they shall never descend to the heir of the part of the son's mother; but if the son's grand-mother has a brother, and the son's great grand-mother has a brother, and there are no other kindred, they shall descend to the grand-mother's brother; and yet if the father had died without issue, his grand-mother's brother should have been preferred before his mother's brother, because the former was heir on the part of his father, though a female, and the latter was only heir on the part of his mother. But where the son is once seised, and dies without issue, his grand-mother's brother is to him heir of the part of his father, and being nearer than his great grand-mother's brother, is preferred in the descent. But this is always intended so long as the line of descent is not broken; for if the son alien those lands, and then purchase them again in fee, *then* the rules of descent are to be observed, as if he was the original purchaser, and as if it had been in the line of the father or mother.

Hale's Hist.
Com. Law,
217, 229.
Co. Lit. 12.
2 Bl. Com. 221,
222.

The sixth canon
of inheritance.

2 Bl. Com. 224.

(a) See the arguments in case of Newman v. Newman, 3 Will. 516.

6th. "The collateral heir of the person last seised must be his next collateral kinsman of the whole blood;" that is, on failure of issue of the person last seised, the inheritance shall descend to the issue of a next immediate ancestor. And, 1st. He must be his next collateral kinsman, either personally or *jure representationis*. 2dly. He must be the nearest kinsman of the *whole blood*; for if there be a much nearer kinsman of the *half blood*, a distant kinsman of the whole blood shall be admitted, and the other entirely excluded (a). A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors; for as every man's own blood is compounded of the blood of his respective ancestors, he only is properly of the whole or entire blood of another, who hath (so far as the distance of degrees will permit) all the same ingredients in the composition of his blood that

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the other hath. Thus if a son purchase land in fee simple, and die without issue, those of the male line ascending to infinity shall be preferred in the descent according to their proximity of degree to the son, as the fathers, brothers and sisters, and their descendants, shall be preferred before the brothers of the grand-father and their descendants. If the father has no brothers nor sisters, the grand-father's brothers and their descendants take the estate. For want of brothers, his sisters and their descendants shall be preferred before the brothers of the great grand-father; for although the father or grand-father cannot immediately inherit to the son, yet the direction of the descent to the collateral ascending line is as much as if the father or grand-father had been by law inheritable; and therefore as in case the father had been inheritable, and should have inherited to the son before the grand-father, and the grand-father before the great grand-father, and consequently if the father had inherited and died without issue, his eldest brother and his descendants would have inherited before the younger brother and his descendants; and if he had no brothers, the sisters and their descendants would have inherited before his uncles, or the grandfather's brothers and their descendants: so, though the father is excluded from inheriting, yet the descent is directed as it would have been had the father inherited, viz. it lets in those first that are in the next degree to him. Thus if lands descend to the eldest son from the father, and the son enter and die without issue, his sister of the *whole blood* shall inherit as heir to the brother, and not the younger son of the *half blood*; but if the eldest son had survived the father, and died before entry, the youngest son would inherit as heir to the father, and not the sister, because he is heir to the person who was last actually seised.

7th. "In collateral inheritances the male stocks shall be preferred to the female (that is kindred derived from the blood of the male ancestors shall be admitted before those from the blood of the female) unless where the lands have, in fact, descended from a female"—Thus: 1st. The line of the part of the mother shall never inherit so long as there are any, tho' never so remote, of the line of the part of the father; as if the mother has a brother, yet if the great great grand-father, or great great great grand-mother of the father has a brother or sister, he or she shall be preferred, and exclude the mother's

Year Book,
12 Edw. 4.
pl. 14.
Fitzherbert's
Abr. "Def-
cent." 2.
Broke's Abr.
38.
Hale's Co. Law
243.
2 Bl. Com. 223.

1 Sid. 193.
1 Lev. 60.
12 Mod. 619.

The seventh
canon of inher-
itance.
Lit. § 4.
2 Bl. Com. 234.

ther's brother, tho' he is much nearer.—2d. THUS ALSO, The male line of the part of the father ascending, shall for ever exclude the female line of the part of the father ascending : as if a son, purchase lands and die without issue, the sister of the father's grand-father, or of his great grand-father, and so *ad infinitum*, shall be preferred before the father's mother's brother, although the father's mother's brother be a male, and the father's grand-father or great grand-father's sister be a female, and more remote ; yet she is of the male line, which is more worthy than the female line, tho' the female line is also of the blood of the father.—BUT, 3dly. As, in the male line ascending, the more near is preferred before the more remote ; so in the female line descending, if it be of the blood of the father, the more near is preferred before the more remote : thus, if one purchase lands and die without issue, and the father, grand-father, and great grand-father, and so upwards, all the males being dead, without any brother or sister, or any descending from them, but the father's mother or sister has a brother ; all these are of the blood of the father, and the remotest of them shall exclude the son's mother's brother ; and tho' the great grand-mother's blood has passed through more males of the father's blood than the blood of the grand-mother or mother of the father ; yet the father's mother's sister shall be preferred before the father's grand-mother's brother, or the great grand-mother's brother ; because they are all in the female line, and the father's mother's sister is the nearest in the male line, so she shall have the preference, as well as in the male line ascending, the father's brother or his sister shall be preferred before the grand-father's brother.—4thly. BUT ALTHOUGH in this last case where the son purchases lands, and dies without issue, and without any heir on the part of the grand-father, the lands descend to the grand-mother's brother or sister, as heir on the part of his father ; yet if the father had purchased these lands and died, and it had descended to his son, who died without issue, the lands should not have descended to the father's mother's brother or sister, for the reasons in the *second rule*, but for want of brothers or sisters of the grand-father's great grand-father, and so upwards in the male ascending-line, it should descend to the father's grand-mother's brother or sister which is his heir of the part of the father, who should be preferred before the father's

ther's mother's brother, who is the heir of the part of the mother of the purchaser, tho' the next heir of the part of the father of him that last died seised, and therefore, if the father who was the purchaser had died without issue, the heirs of the part of the father, whether of the male or female line, should have been preferred before the heirs of the part of the mother: So the son, who stands now in the place of the father, and inherits to him primarily in his father's line, dying without issue, the same devolution and hereditary succession should have been as if his father had immediately died without issue, which should have been to his grand-mother's brother, as heir of the part of the father, tho' by the female line, and not to his mother's brother, who was only heir of the part of his mother, and who is not to take till the father's line both male and female be spent.—5thly. So ALSO, if the son purchase land, and die without issue, and it descend to any heir of the part of the father, and then the line of the father after entry and possession fail, it shall never return to the line of the mother; tho' in the first instance, or first descent from the son, it might have descended to the heir of the part of the mother. For now by this descent and seisin it is lodged in the father's line to whom the heir of the part of the mother can never derive a title as heir, but it shall rather *escheat*. But if the heir of the part of the father had not *entered*, and then the line had failed, it might have descended to the heir of the part of the mother, as heir to the son, to whom immediately, for want of heirs of the part of the father, it might have descended.—AND FOR THE SAME REASON if it had once descended to the heir of the part of the father of the grand-father's line, and the heir had entered, it should never descend to the heir of the part of the father of the grand-mother's line; because the line of the grand-mother was not of the blood or consanguinity of the line of the grand-father's side.—AND 6thly. If for default of heirs of the purchaser of the part of the father, the lands descend to the line of the mother; the heirs of the mother of the part of her father's side shall be preferred in succession before her heirs of the part of her mother's side, because the heirs of the part of her father are the more worthy.

DESCENTS BY CUSTOM. Descents in fee-simple by custom are of several kinds: sometimes to all the sons, or to all the brothers where one brother dies without issue, as in *gavel-kind*. All the lands in *England* were in nature of

See Mr. Robinson's very excellent and learned Treatise upon the

nature of gavel-kind land, and descents by custom.

gavel-kind before the Norman Conquest, and descended to all the issue equally; but, as the Normans did not conquer Kent, this *custom* or tenure is still preserved in some places there. Sometimes the lands descend to the youngest son, as in *Borough English*; and sometimes to the eldest daughter or the youngest.

2 Bl. Com. 202.
Vide ante c. 1.
f. 4.

DESCENTS BY STATUTE, are those which take place in fees in tail *per formam doni* in pursuance of the statute of *Westminster* the second, in which the descent is restrained and regulated according to the words of the original donation and does not intirely pursue the common law doctrine of inheritance.

CHAPTER THE FOURTH.

The Law of Purchase by DEEDS and LEASES.

1. PURCHASE, in a legal sense, not only includes such acquisition of lands, as are obtained by way of bargain and sale for money or some other valuable consideration, but every other method of coming to an estate, except that by inheritance or DESCENT: And therefore if a person grant or even freely give land to another, the grantee in the first case, and the donee in the second, is, in the eye of the law, A PURCHASER.

Co. Lit. 3.
b. 18. a. 22.
163.

2 Bl. Com. 241.

2. The word *purchase*, when used in its legal sense, includes the five following methods of acquiring a title to real estates, viz. by escheat, occupancy, prescription, forfeiture, and alienation; but the most usual and universal method of acquiring such title is by this last species called ALIENATION, conveyance, or purchase in its more limited signification.—Of alienation also there are several kinds, as by deed, record, special custom, and devise; but, upon the present occasion we shall only take notice of the mode of alienating estates by the kind of deed called A LEASE (a) that being the instrument by which the relation of LANDLORD AND TENANT, or, in other words, of lessor and lessee is, in general, constituted; it may, however, be created as well by AN AGREEMENT for a lease, as by A LEASE itself.

(a) By 6 & 7
Ann c. 20. all
deeds of purchase,
&c. in the counties of
Middlesex and
York are to be
registered.

3. A LEASE is a species of conveyance, usually made in consideration of RENT or other annual recompence, by which

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an estate for life, for years, or at will may be created in lands, tenements, or hereditaments whether *corporeal*, or incorporeal, by the words "demise, grant, and to farm, let." It must always be made for a *less time* than the lessor hath in the premises; for, if it be made for *the whole interest*, it is more properly an *assignment* than a lease.—A lease for years may be made to commence at a day to come, provided it be certain; for every such estate must have a certain beginning and ending; (a) but a lease for life cannot be made to commence *in futuro*, because a lease for life is, in contemplation of law, a freehold, (b) and no freehold can commence *in futuro*. A lease does not vest the estate in the lessee, but only gives him a right to enter and possess it; and therefore the estate is not vested in him till actual entry. To a lease for life of *incorporeal hereditaments*, livery of *seizin* is a necessary incident, but to no other.

4. A tenant in *fee-simple* being possessed of the whole interest in the estate may let leases of any duration; a tenant for life can only make leases during his own life, but cannot bind the reversioner unless he be empowered so to do by the person from whom his estate was derived.

5. A tenant *in tail* also by the common law could not make any leases which should bind the issue in tail, but by 32 Hen. 8. c. 28. he is enabled to make leases to endure, for three lives, or one and twenty years, so as to bind the issue in tail, but not those in remainder or reversion, provided, 1st. That the lease be by indenture and not by deed poll, or by parol. 2dly. That it begin from the making or day of the making, and not at any greater distance of time. 3dly. That if there be any old lease in being it be first absolutely surrendered, or be within a year of expiring. 4thly. That it be *either* for twenty-one years or three lives and not for both. 5thly. That it *exceed* not the term of three lives or twenty-one years. 6thly. That it be of *corporeal hereditaments* (a). 7thly. That it be of lands and tenements most commonly letten for twenty years past; that is for above half the time, or eleven years out of the twenty.

(a) By 5 Geo. 3. c. 17. A lease of tithes or other *incorporeal hereditaments* alone, may be granted by any bishop or ecclesiastical or eleemosynary corporation, and the suc-

cessor shall be intitled to recover the rent by an action of debt, which (in case of freehold leases) he could not have brought at common law. 2 Bl. Com. 319.

(a) Vide ante p. 7.

(b) Vide ante p. 6.

Co. Lit. 44.
2 Bl. Com. 318.

3 Bac. Abr.
398.
Co. Lit. 47.
6 Co. 15.

3 Bac. Abr.
310.
Co. Lit. 45.
2 Bl. Com. 318.
3 Com. Dig.
239.

8thly. That the most usual and customary rent for twenty years past be reserved yearly on the lease. And 9thly. That it be not made "without impeachment of waste."

3 Bac. Abr.
305.
Co. Lit. 45.
Cro. Jac. 563.
Cro. Car. 165.

6. A husband seised of lands *jure uxoris*, could not, at the common law, make a firm or valid lease for any longer term than the joint lives of himself and his wife, for then his interest expired; but by the abovementioned statute 32 Hen. 8. c. 28. a husband so seised of lands in fee-simple or fee-tail, provided the wife join in the conveyance, may make a lease for three lives or one and twenty years to bind her and her heirs; but the same requisites must be observed as in leases made by a tenant in tail.

(a) 32 Hen. 8.
c. 28.
1 El. c. 19.
13 El. c. 10.
14 El. c. 11.
14 El. c. 14.
18 El. c. 11.
43 El. c. 29.

7. Ecclesiastical persons, that is all colleges, cathedrals and other ecclesiastical or eleemosynary corporations, are also by the *enabling* and *disabling* statutes (a) as they are called, authorised to make leases to bind their successors, provided, 1st. they do not exceed twenty-one years or three lives from the making. 2dly. That the accustomed rent or more be yearly reserved thereon. 3dly. That when there is an old lease in being, no concurrent lease shall be made unless where the old one will expire within three years. 4thly. That such lease be not made *without impeachment of waste*—THEY are also empowered by the said statute to let houses in corporation or market towns for *forty years* provided they be not the mansion houses of the lessors, nor have above ten acres of ground belonging to them, and the lessee be bound to keep them in repair.

Co. Lit. 44.
2 El. Com. 321.

8. Parsons or vicars, are by the above statutes *restrained* from making longer leases than for twenty-one years or three lives: but to enable them to make any leases at all so as to bind the successor, they must first obtain the consent of the patron and ordinary; and though leases contrary to these acts are declared void, yet they are good against the *lessor* during his life; for they were intended for the benefit of the successor only; and no man shall take advantage of his own wrong. In case also, that any *beneficed clergyman* (b) be absent from his cure above fourscore days in any one year he shall not only forfeit a year's profit of his benefice, to be distributed among the poor of the parish, but all leases made by him of the profits of such benefice, and all covenants and agreements of like nature shall cease and be void; except in the case of *licensed pluralists* who are allowed to demise the living on which they are non-resident

(b) 13 El.
c. 20.
14 El. c. 11.
18 El. c. 11.
43 El. c. 9.

ident

fidest to *their curates* only; provided such *curates* do not abate themselves above *forty days* in any one year.

9. Infants or such as are under the age of twenty-one years may make leases, but they may avoid them on their attaining their full age. 3 Bac. Abr. 304.

10. Executors and administrators, as they may dispose of terms absolutely vested in them in right of their testators or intestates, so may they lease the same for any fewer number of years; and the rent reserved on such leases shall be assets in their hands and go in a course of administration. 3 Bac. Abr. 405. 6 Co. 63.

11. If a tenant for life in lands, &c. lease the same for a certain number of years, and the lessee assign such lands by *parol* without deed, rendering rent, though such assignment operates as a surrender, yet it is not an express surrender; (a) and if the rent reserved thereon was not good by way of reservation, yet it shall be deemed good by way of contract.—But if a lessee for years accept a new lease from his lessor it will be a surrender in law, for this affirms him able to make a lease, although the new lease be for a less term, or by *parol*, when the first lease was by indenture, and although the new lease be with a defeazance, upon a condition subsequent performed, or to commence at a future day. Dyer 251. 2 Roll. Abr. 497. 1 Leon. 179. Plowd. 106. Dyer 140. 5 Co. 11. Cro. El. 522. Cro. Jac. 84. 5 Com. Dig. 513.

12. A lease made by the lessor to the lessee, from year to year during their mutual pleasure, is, after entry made, not only a lease for that year but from year to year until half a year's warning be given by one of the parties to the other of quitting the farm; and if the tenant in such case die intestate his administrator has the same interest in the land which his intestate had. 6 Co. 35. 2 Roll. Abr. 851. 3 Bac. Abr. 432. 2 Salk. 413. 3 Term Rep. 13.

13. A lease can only be made void by the lessor, and that is, by *his entry*. It may be made voidable by the laches of the lessee, in not paying his rent according to the covenants therein; but if the lessor afterward accept the rent, that which was before voidable becomes a good lease by such acceptance.

14. A lessor of lands, tenements, &c. for a term of years may maintain an action of debt for rent against the executor or administrator of his lessee, after assignment 3 Co. 23. Cro. El. 555. 2 Com. Dig. 641, 642.

(a) By 29 Car. 2. c. 3. No lease, estate, or interest of freehold or term of years, or any uncertain interest, not being copyhold, in or out of any manors, lands, &c. shall be surrendered unless by deed or note in writing signed by the party so surrendering, or his agent thereto authorized in writing, or by act and operation of law. 5 Com. Dig. 510.

made by him of such lease; for the assignment is not good till notice thereof to, and assent by, the lessor; as by accepting the arrears of rent. AND NOTE: If no arrears be due, no notice is necessary.

Co. Lit. 310.
1 Lev. 22.
2 Com. Dig.
640.

Co. Lit. 4.
3 Co. 2.
2 Bl. Com. 17.

15. If a lessor grant a term at a reserved rent, and afterward assign such rent, and the lessee *attorn tenant* (a) to such assignee, he may maintain a *distress* or an action of *debt* against the lessee for the rent reserved, when in arrear.

16. Under the name of *land*, are understood not only gardens, meadows, pastures, rivers, woods, moors, *waters*, marshes, furze, heath, but messuages, houses, tofts, mills, castles, and other buildings; for they consist of two things; *land* which is the foundation, and *structure* thereupon; and therefore by the name of *land*, which is *nomen generalissimum* every thing terrestrial will pass.

Co. Lit. 55.
2 Bl. Com. 145.

17. If a person let lands, &c. *at will*, and afterward do any act inconsistent with such letting, the lessee may avail himself thereof to determine such holding; thus if a lessor declare that the lessee shall hold the premises no longer, the lessee, on knowledge and proof of these words, may deliver up possession of the premises to the lessor.

2 Bl. Com. 324.

18. A lease for a year, reserving a *pepper-corn* only, is held to operate as a *bargain and sale*, and makes the lessee capable of taking a *release* according to the tenure of the grant.

19. A lease for *ninety-nine years*, to hold "if two persons so long live," without saying, "*or either of them*," will determine on the death of either.

20. A lease although it be sealed and delivered by the lessor only, and not by the lessee, yet it is good, and will operate against the lessor; for he has thereby completed his part of the contract.

21. Where a lease for lands has an *exception* of a close or wood, if a passage thro' the same be absolutely necessary

(a) By 4 & 5 Ann c. 16. All grants and conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands shall be good without attornment of the tenants; provided that no such tenant shall be damaged by payment of rent to any such grantee or conuitor, or by breach of any condition for non-payment of rent before notice given him of such grant by the conusee or grantor: And by 11 Geo. 2. c. 19. the attornments of tenants to strangers claiming title to the es-

tate of their landlord shall be absolutely null and void to all intents and purposes whatsoever, and the possession of their respective landlord or lessor, shall not be changed or affected by such attornment; but that shall not affect the validity of any attornment made in consequence of some judgment at law or donee in equity, or made with the privity or consent of the landlord or lessor, or to any MORTGAGEE after the mortgage has become forfeited. Hargrave's Co. Lit. p. 309. a.

for the tenant to come at the demised premises, the law gives him a right of passage through the same, notwithstanding such exception.

22. Where a tenant for life, or years, removes his goods out of the house or lands, and the lessor enters therein, this is no surrender of the lessee; but if he continue therein after demand made of the said premises by the lessee, an action of *trespass* will lie for such *illegal* entry. Stra. 717.

23. If a man make a lease to another without any consideration, the lessee may seize to his own use; or if he make a lease to another, and to *his heirs* for any given term, intending that if the lessee die within that term, his heirs should, in that case, enjoy the premises during that term, *this* demise is void; for if the lessee die, his *executors*, and *not his heirs*, shall enjoy the term; for by the established laws of the land, *all chattels* devolve to the *executor*, and not to the *heir*.

24. By a demise of "a house with the appurtenances," the orchard, gardens, yards, shops, and curtilage pass, but not *land*; for land, unless it be occupied with a house is not considered as properly appurtenant thereto; but if such demise have the words "*with all lands thereunto belonging*," the lands used therewith will pass. Cro. Jac. 526.
Plowd. 170.
Cro. Car. 17.
57.
3 Com. Dig. 443.

25. If a man make a lease for a longer term than he has therein, a court of *equity* will establish such lease for his term. 2 Lev. 142.
2 Term Rep. 171.

26. On a lease assigned to another, if the lessor accept rent of the assignee, it is a sufficient notice to him of the assignment, and he cannot afterward resort back to the first lessee for the rent. *Quare*, 3 Lev. 295.
4 Mod. 71.
2 Com. Dig. 565.

27. In a lease of a house, if the lessor except "*two rooms and free passage thereto*," and the lessee assign such lease, if the assignee disturb the lessor in such right of passage, an action of *covenant* lies for such disturbance; but if the disturbance had been in the *rooms* excepted, no action of covenant would have lain, because they were not demised; for where a lessee agrees to let the lessor have any thing out of a *demise*, as a way, common, &c. he has his redress by action of covenant. Cole's Case
1 Salk. 196.

28. If the lessee of a term put up any thing in a house for the convenience of his business, he may remove the same at any time during the term; but what he does in beautifying the premises, he cannot remove; the general rule be- See the case of Fitzherbert v. Shaw.
1 Term Rep. C. B. 258.

ing, that whatever is *fixed* on or to the freehold becomes part thereof, and reverts to the lessor.

3 Com. Dig.
443.

29. If a man let a parcel of land by the description of "all his meadow land in C. containing *twenty acres*," yet if the same should be *forty acres*, it will pass by this demise.

1 Will. 196.
2 Will. 165.

30. Demises of lands, &c. to take effect "from the day of the date," do not commence until the next day after the deed bears date; but if it be "*to have and to hold from the date*," or "*from the making of the indenture*," in either of these cases, it operates immediately. A lease to hold "*from henceforth*" shall be computed from the day of the delivery; and "*from the making*" shall be taken *inclusive* of the day of the making; for the day of delivery is *inclusive*, and is considered as the first day of the term: if it be made "*To hold from the day of the date*, or "*the day of making*," then the day of the date or making shall be *exclusive*; but it is otherwise if *To hold from the date* and it be delivered on the same day: And when a lease is made to commence from a day to come that day is excluded. If an *habendum* of a lease be for a term of *twenty-one years*, without mentioning when the same is to commence, it shall be held to begin from the delivery; or if a lease bear date on a day impossible, if the same be limited to begin from the date thereof, it shall take effect and commence from the delivery of such lease as if there were no date thereto. If a man make a lease to another for *twenty-one years*, and afterward make another lease to him, to commence from "the expiration of the first term," if the first lease be surrendered, the second shall immediately commence; but it would have been otherwise if it had been to commence from "the end of the said *twenty-one years*;" for in that case although there had been a surrender, yet such second lease would not have commenced till the first term had expired, because the law makes a distinction between a *term* and *time* of years.

Co. Lit. 46. b.

Co. Lit. 45. b.

31. Where leases are made for a certain number of years, "if two or more persons so long live," this term ceases on the death of all the lessees.

32. A lease for years does not by the words "*demise, grant, and to farm let*," empower the lessee to bring an action of *trespass*, until he has taken actual possession thereof; but the words, "*bargain and sell*," when for a pecuniary consideration, though ever so small, give the party immediate

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mediate possession as soon as the deed is executed, and enables him to bring the above action. (a)

33. On letting lands where there are mines underneath or trees thereon, the lessor cannot enter to take the same without being guilty of a trespass, unless he reserve to himself such a privilege on the demise; but if he enter grounds demised by him to another, he is no trespasser; for the law will presume that he entered to see if waste was done. 5 Com. Dig. 576.

34. The loss of a lease does not affect the term demised thereby, if the lessee can prove such term is still subsisting and undetermined. 3 Term Rep. 151.

35. A lease or deed may be dated as far back as the parties please before it is sealed, but it cannot be dated forwards.

36. The foundation of deeds ought to be good and honest, and not to perfect any unlawful contract; and therefore by 27 Eliz. c. 4. All conveyances, grants, &c. made of lands or tenements to defraud any purchaser of the same for a valuable consideration, as against such purchaser, and every other person lawfully claiming under him, shall be void.

37. All deeds, gifts, grants and leases, made by a man while under *duress of imprisonment* are voidable, not only by the party making the same, but by his heirs, and those who derive their estates from him: And persons unable to read are not compellable to do any act or deed without having a proper person with them, who can read and explain the same; yet if they do such act it will bind them. 2 Bl. Com. 292.

38. A tenant at *will* of lands, if his term be out, or he be *ousted* thereof, if he sow such lands, shall notwithstanding have liberty to reap and carry away his corn; but if he be tenant on a *lease for years*, he shall not have such privilege, because he knew when his lease would determine, (b) and did it at his peril, unless such lease contains a covenant, that the lessee shall have his *way-going crop*; the doctrine is, that a tenant at *will*, or his executors, shall be entitled only to such things on the land as bring a yearly profit:—But a *custom* that a tenant may leave his *way-going* 2 Bl. Com. 145, 146.

(a) The reason of this is that a bargain and sale raises a use by implication in the bargainee, and then the statute of uses 27 Hen. 8. c. 10. immediately executes the use, that is, it conveys the possession to the use, and

transfers the use into the possession. 2 Black. Com. 333; or as it is better expressed, the bargain first vests the use, and then the statute vests the possession. Cro. Jac. 696.

(b) Vide ante p. 6. f. 9.

crop

(a) *Bevan v. Delahay*.
 1 Term Rep.
 in Com. Pleas,
 p. 5. Trinity
 Term 28 Geo.
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crop in the barns or on the lands of the farm for a certain time after the lease is expired and he has quitted the premises, is good; and the landlord may distrain the corn so left for rent arrear after *six months have expired* from the termination of the term (a). If a man seised of land in right of his wife, sow the same, and die, his executor shall be entitled to the corn growing thereon; but if he and his wife had been joint-tenants of such land, the wife, on his death, would have been entitled to the corn by survivorship. And although a lease made by a husband of the wife's lands in his own name only, is void after his death; yet notwithstanding the lease is void, the lessee shall have the corn sown on such lands.

1 Bl. Rep. 351.

39. The assignee of a lease, assigned after the covenant broken by lessor, is not liable for the breach.

1 Bl. Rep. 596.

40. A month's notice is not sufficient to quit under a lease from year to year, but *quare* if the party die, whether it is not sufficient for the executor.

2 Bl. Rep. 766.

41. A covenant not to assign, set over, or otherwise do or put away the lease or demised premises, does not extend to an under-lease for part of the term.

2 Bl. Rep. 840.

42. In action against a tenant for not performing his agreements, the estate of the lessor (whether truly averred or not) is immaterial, if the tenant had the benefit of his lease.

Ibid.

43. An agreement to leave a farm as found, means to leave it in tenantable repair, if so found.

2 Bl. Rep. 973.

44. An agreement to grant a lease "and lessor did thereby set and let" for twenty-one years from a *future* day, is a *present* lease, if so intended by the parties.

2 Bl. Rep.
 1171.

45. A general *parol demise*, at an annual rent, where the greatest part of the farm is inclosed, and a small part of it in common fields, is only a lease from year to year, and not for so long as the usual round of husbandry extends.

2 Bl. Rep.
 1224.

46. Agreement to take a farm, the ARABLE LANDS from *Old Candlemas*, the PASTURE from *Old Lady-day*, the MEADOW from *Old May-day*, is a taking of the whole from *Lady-day*; and notice to quit before *Michaelmas*, is sufficient.

Dougl. 50, 54.
 Cowp. 482.

47. A lease void in its creation as against a remainderman, does not become valid by his accepting rent, or suffering the lessee to make improvements after his remainder vests in possession, and if the lease be only voidable, yet, acceptance of rent is not, of itself, a confirmation, but *quare* whether equity would not relieve in such a case.

48. A

48. A lease by the husband of a *feme covert's* estate, Dougl. 53. though not within the stat. 32 Hen. 8. c. 28. is only voidable; but a mortgage of a *feme covert's* estate, though in form of a lease, is void.

49. Under a *proviso* that all assignments of a lease shall be void if not enrolled, under-leases are not included. Dougl. 56.

50. Where a lease is *ipso facto* void by the condition or limitation, no acceptance of rent afterwards, can make it have continuance, as between the grantor and the grantee; otherwise it is of a lease voidable only. Dougl. 58.

51. An *under-lease* is not an *assignment*, to the effect of working a forfeiture under a *proviso* not to assign. Dougl. 57. 184.

52. When the whole term is made over by the lessee, although, in the deed by which this is done, the rent and a power of entry for non-payment thereof, be reserved to him, and not to the original lessor, this is an *assignment* and not an *under-lease*; and in such case, the original lessor, or his assignee of the reversion, may sue or be sued, on the respective covenants in the original lease, and this although new covenants are introduced in the assignment. Dougl. 187.

53. What cannot be supported as an *assignment*, shall be good as an *under-lease* against the party granting it. Dougl. 188.

54. Mortgagee after giving notice of the mortgage, to the tenant in possession under a lease prior to the mortgage, is intitled to the rent in arrear at the time of the notice, as well as to what accrues afterwards, and he may distrain for it, after such notice. Dougl. 279.

55. A lease to commence "from the day of the date" is good under a power to grant leases in *possession* only, and not in *reversion*. Cowp. 714. Dougl. 53.

56. Though tenant for life, with power to grant leases in possession for twenty-one years, convey his life estate to pay an annuity for his life, and the overplus to himself, he may still grant leases agreeable to the terms of the power. Dougl. 292.

57. Where tenant for life has a power to grant leases, in possession, but not by way of reversion, or future interest, a lease *per verba de presenti*, is not contrary to the power, though the estate, at the time of making the lease, was held by tenants at will, or from year to year, if, at the time, they received directions, from the grantor of the lease, to pay their rent to the lessee. Earl Ferrers v. Funkean. Dougl. 565.

58. Under a power to lease all manors, messuages, lands, &c. so as there be reserved as much rent as is now paid for the the Dougl. 566. Sed vide infra s. 72.

the same; such parts of the estates enumerated in the power, never to have been demised, may be let.

Dougl. 574.

59. But, in a family settlement of an estate consisting of some ground always occupied with the family seat, and of lands let to tenants upon rents reserved, the qualification annexed to the power of leasing, *viz.* that the ancient rent must be reserved, excludes the mansion house and lands about it never let.

Cowp. 595.

60. No man has a term of 2000 years, as a lease, but to attend the inheritance.

Lofft 276.

61. A lease from the first of *June* for three years, begins on the *second*, and ends on the *first*.

Ludford v.
Barber.
1 Term Rep.
86.

62. A lease executed by the tenant for life, (in which the reversioner, who was then under age, is named as a party, but not executed by him) is void on the death of the tenant for life, &c. and an execution of it afterwards by the reversioner only, is no confirmation of it, so as to bind the lessee in an action of covenant.

Ruberry v.
Jervoise.
1 Term Rep.
229.

63. Under a covenant in a lease for sixty-one years, "That at any time within one year after expiration of twenty years of the term, the lessor would execute another lease of said premises unto the lessee for a further term of twenty years, to commence from the expiration of the said term of sixty-one years," the lessor cannot claim a further term of twenty years, at the expiration of the last term of twenty years in the lease, if he have omitted to claim a further term at the end of the first and second twenty years in the lease.

Smith v. Mapleback, Mich.
Term 27 Geo. 3.
1 Term Rep.
441.

64. Where a lease came into the hands of the original lessor, by an agreement between him and the original lessee, "that the lessor should have the premises as mentioned in the lease, and should pay a particular sum over and above the rent, annually, towards the good-will already paid by such assignee," such an agreement operates as a surrender of the whole term: And the sum in the agreement is considered as a sum to be paid annually in gross, not as rent; and the assignee cannot *distrain* either for that or for the original rent: But he has a remedy by *assumpsit* for the sum reserved for the good-will.

Doe on the demise of Freeland v. Bult,
Easter Term
Geo. 3.
1 Term Rep.
761.

65. A demise of premises in *Westminster*, late in the occupation of *A.* particularly describing them, part of which was a yard, does not pass a cellar under that yard, which was then in the occupation of *B.* another tenant of the lessor.

66. Under

66. Under a power to a tenant for life to grant leases for years, provided he reserve the *usual* covenants; if he make a lease containing a proviso that in case the premises be blown down or burned; the lessor should build, otherwise the rent should cease, and the jury find that such covenant is *unusual*, the lease is void.

67. A lessee who covenants to pay rent, and to repair, with an exception of casualties by fire, is liable upon the covenant for rent, though the premises be burned down, and not rebuilt by the lessor after notice.

68. A paper, containing words of present contract, with an agreement that the lessee should take possession immediately, and that a lease should be executed in future, operates only as an *agreement for a lease*, and therefore, if executed before the passing of the 23 Geo. 3. c. 58. it need not be stamped.

69. Under a grant of "a free and convenient way" for the purpose (amongst other things) of carrying coals the grantee has a right to lay a second waggon way, but under a grant of a way "from A. to B. in, through and along" a particular way, the grantee is not justified in making a transverse road *across* the same.

70. A proviso in a lease for twenty-one years, that the landlord shall re-enter on the tenant committing an act of bankruptcy, is good.

71. When an *infant* becomes intitled to the reversion of an estate, leased from year to year, he cannot eject the tenant without giving the same notice as the original lessor must have given.

72. If a lease contain a proviso that the lessee, his executors, administrators and assigns shall not *set, let, or assign* over the whole or part of the premises without leave in *writing*, on pain of forfeiting the lease, the administratrix of the lessee cannot underlet without incurring a forfeiture; though for a less time than the whole term; and a *parol* licence to let the premises will not discharge the lessee from the restriction of such a proviso; nor will the lessor's receiving rent after such forfeiture be any *waiver* thereof, unless the forfeiture were known to him at the time he received it.

73. If a tenant hold under an agreement for a lease at a yearly rent, whereby it is stipulated that the agreement shall continue for the life of the lessor, and that a clause shall be inserted in the lease giving the lessor's son power to take the

Doe on the demise of Ellis v. Sandham, Easter 27 Geo. 3. 1 Term Rep. 705.

Belfour v. Weston, 1 Term Rep. 310.

Goodtitle on the demise of Estwick v. Way, Easter, 27 Geo. 3. 1 Term Rep. 735.

Senhouse v. Christian, 1 Term Rep. 560.

Roe v. Galliers, Mich. Term, 28 Geo. 3. 2 Term Rep. 133.

Maddox v. White. Mich. Term 28 Geo. 3. 2 Term Rep. 159.

Roe on the demise of Gregton widow v. Harrison, Easter Term, 28 Geo. 3. 2 Term Rep. 425.

Doe on the demise of Bromfield v. Smith. Easter, 28 Geo. 3. 3 Term Rep. 436.

house for himself when he came of age, the son must make his election in a *reasonable time* after he comes of age; the delay of a year is unreasonable, and the tenant cannot be ejected upon half a year's notice to quit, served after such a delay; but if he had elected within a *week* or a *fortnight*, that certainly would have been reasonable.

Buckley assignee
of Buckley v.
Taylor. Tri-
nity Term,
28 Geo. 3.
2 Term Rep.
600.

74. If a trader, after committing an act of bankruptcy, take a house, and agree to pay half a year's rent in advance, where by the custom of the country half a year's rent becomes due on the day on which the tenant enters, the landlord, after an assignment under the commission, and before the year expires, may *distrain* the goods on the premises for half a year's rent, or, if he buy the tenant's goods at the sale under the commission, he may retain the amount of the year's rent.

Doe v. Clare.
Mich. Term
29 Geo. 3.
2 Term Rep.
739.

75. An instrument on an agreement stamp, reciting that *A.* in case he should be intitled to certain copyhold premises on the death of *B.* would immediately demise the same to *C.* declaring that "*he did thereby AGREE to demise and let the same,*" with a subsequent covenant to procure a licence to let from the lord, operates as an *agreement* for a lease, and not as an *absolute demise*.

Webb v. Russell.
Trinity Term
29 Geo. 3.
3 Term Rep.
393.

76. If a mortgagor and mortgagee make a lease, in which the covenants for the rent and repairs are only with the mortgagor and his assigns, the assignee of the mortgage cannot maintain an action for the breach of these covenants, because they are collateral to his grantor's interest in the land, and therefore do not run with it; but the mortgagor himself may.

Stokes v. Russell.
Trinity
30 Geo. 3.
3 Term Rep. 678.

Webb v. Russell.
3 Term Rep.
393.

77. If a tenant for a term of years lease for a less term, and assign his reversion, and the assignee take a conveyance of the fee by which his former reversionary interest is merged, the covenants incident to that reversionary interest are merged.

Ibid.

78. By 32 Hen. 8. c. 34. the grantees of reversions have the same remedy against their lessees, their executors, &c. as their grantors had.

Southall v.
Leadbeater.
Mich. Term.
30 Geo. 3.
3 Term Rep.
458.

79. A lessee for twenty-one years, at a *pepper corn rent* for the first half year, and a *rack rent* for the rest of the term, who by agreement was to put the premises in repair, and covenanted to pay the land-tax, and all other taxes, rates and *impositions*, having assigned his term for a small sum in gross, is not liable to pay the expence of a party wall, either by the provisions of the 14 Geo. 3. c. 48. § 41.
or

or by the covenant; but that charge must, in such case, be borne by the original landlord; for the statute intended to throw that burthen on persons to whom long leases had been granted, with a view to an improvement of the estate, and who afterwards underlet at a considerable increase of rent: If the lessee of such a term had afterwards sold the lease for a sum in gross, he would also be liable within the statute.

80. A lease made in 1785 for three, six, or nine years, determinable in the years 1788, 1791, and 1794, is a lease for nine years, determinable at the end of three or six years by either of the parties, on giving reasonable notice to quit.

Goodright v. Richardson. Mich. 30 Geo. 3. 3 Term Rep. 463.

81. Under a covenant in a building lease by the tenant to pay all the taxes except the *land-tax*, the landlord is only to pay the *old land-tax*, and not the *additional land-tax* occasioned by the improvement of the estate.

Hyde v. Hill. 3 Term Rep. 377.

82. Under the settlement of an estate, with a power to the tenant in possession to let *all or any part* of the premises, *so as* the usual rents be reserved, A LEASE of *tithes*, they not having been let before, is void.

Pomeroy v. Partington. Trin. 30 Geo. 3. 3 Term Rep. 665.

PRECEDENTS OF AGREEMENTS. (a.)

83. MEMORANDUM made this day of 1791, between *A. B.* of, &c. and *C. D.* of, &c. as follows:—The said *A. B.* doth let unto the said *C. D.* the rooms and apartments following, *viz.*—An entire first floor, the fore kitchen and cellar under it, and a fore garret, being part of the house, which he the said *A. B.* now lives in, situate and being in TO HAVE AND TO HOLD the said premises for and during the term of half a year, to commence from *Midsummer Day* next, after the date hereof, at and for the yearly rent of pounds of lawful money of *Great Britain* payable quarterly, by even and equal portions, the first quarterly payment to be

An agreement for letting an apartment N. B. This agreement must be on a *six shilling stamp*.

(a) By 23 Geo. 3. c. 58. All agreements must be impressed with a *six shilling stamp* within twenty-one days from their date, EXCEPT—Agreements for leases at rack rent under the yearly value of five pounds:—Agreements for the hire of labourers, artificers, manufacturers,

or menial servants:—Agreements for the sale of goods, wares or merchandize:—Agreements whereof the matter shall not exceed twenty pounds:—And agreements made in Scotland and stamped with the duty required on deeds there.

made

Agreements for letting Apartments, Houses, &c.

made on *Michaelmas Day* next ensuing the date hereof: AND IT IS FURTHER AGREED by and between the parties hereto, that the said *C. D.* after the expiration of the said half year, may hold and enjoy the said premises from quarter to quarter, so long as both parties shall agree, at the rent of pounds for every quarter, and each party is at liberty to give a quarter's warning for the quitting possession of the said premises, AND IT IS ALSO FURTHER AGREED, between the said parties, that when the said *C. D.* shall leave the said premises he shall leave the glass windows and other things belonging to the said premises in as good condition as they now are (reasonable wear only excepted.) *As witness.*

An agreement
for letting a
house—
N. B. This
agreement must
also be on a
six shilling
stamp.

83. MEMORANDUM made the day of 1791,
between *A. B.* of, &c. and *C. D.* of, &c. as follows,
viz. The said *A. B.* doth hereby demise and let unto the
said *C. D.* a house and garden with the appurtenances, situate in in the county of late in the possession
of *E. F.* and now of for the term of *three years* certain, and a quarter's warning or notice to be given or left in
writing by either of the said parties, to or for the other of
them, at the end of the said *three years*. The rent thereof
to commence from *Lady-day* next, at and under the yearly
rent of payable quarterly; the first payment thereof
to begin and be made at *Midsummer-day* next. AND THE
said *C. D.* doth agree to take the said house of the said *A. B.*
for the term, and at the said rent payable in manner
aforesaid; AND ALSO that he will at his own costs and
charges make good, or cause to be made good, and put into
the same or as good condition and order as the same lately
was in, the kitchen, or ground-room of or belonging to
the said house, which he has now converted or caused to be
converted into a cheese-monger's shop, at the expiration or
other sooner determination of this present demise; AND
ALSO will then leave on the said premises, for the use of the
landlord, the paper hangings in the chambers, the back
window-shutters, the stone-hearth, two shelves in the closet,
one shelf in the kitchen, and another shelf in the wash-
house of and belonging to the said house, AS WITNESS,
&c.

84. MEMORANDUM made the day of 1791,
between *A. B.* of, &c. and *C. D.* of, &c. as follows, viz.
—The said *A. B.* in consideration of the rent herein after-
mentioned and agreed to be paid to him, *hath* demised, and
hereby *doth* demise, and let unto the said *C. D.* a messuage
or tenement, situate, and being in court, in the pa-
rish of , in the county of *M.* TO HOLD to the said
C. D. for the term of *one year*, to commence from *Christ-*
mas-day next, at the yearly rent of pounds; to be
paid quarterly; and the said *A. B.* doth hereby agree by or
before *Christmas-day* next, well and sufficiently to repair,
amend, and put in good and tenantable order and condi-
tion, the said house with its appurtenances, in all needful
and necessary reparations and amendments whatsoever; in
in case the same is not already in such good and sufficient
repair and condition, and the same premises so to continue
and keep in such repair from thenceforth, for and during
all such time as the said *C. D.* shall be and continue there-
in as tenant at will only. *The* said *C. D.* in consideration
thereof doth hereby agree to take and rent the said house of
the said *A. B.* for the term, and at the rent, payable as
aforesaid, which said rent she agrees to pay unto him quar-
terly. AND it is hereby mutually agreed between the said
parties, that after the expiration of the said term of a year,
if either of them shall be minded or desirous to quit, leave,
or part with each other, or from the said premises, she or he
shall give one quarter's warning or notice in writing thereof
to the other of them. AND if after the said term of a year
be expired, she the said *C. D.* shall be minded or desirous to
have and take a lease of the said premises with the common
and usual covenants, for a further term of *three* or *seven*
years at pounds a year, payable quarterly, and, of
such her intention and desire, shall give notice, in writing,
to the said *A. B.* within *three months* after the expiration of
the said term of a year, that then he the said *A. B.* shall and
will grant her such lease for such further term or terms,
and at such rent, and payable as aforesaid, the costs and
charges of such lease (if demanded by the said *C. D.*) to
be paid and discharged equally, by and between the said
parties, *As witness, &c.*

Witness,

D

An agreement
for letting a
house; with a
covenant for a
lease at the op-
tion of the
lessee.

N. B. This a-
greement must
be on a *six shil-*
lings stamp.

An agreement to grant a lease of a house.

N. B. This agreement must be on a *six shillings* stamp.

85. MEMORANDUM made this day of 1791, between *A. B.* of, &c. of the one part and *C. D.* of the other part as follows, *viz.*—FIRST the said *A. B.* doth hereby agree at his own costs, with all convenient speed to execute unto the said *C. D.* a lease of ALL that messuage late in the possession of *E. D.* situate in , with the appurtenances, to hold to him the said *C. D.* his executors and assigns, from *Midsummer-day* now next ensuing, for the term of years, at and under the annual rent of pounds, payable quarterly, free of taxes (*except the land-tax*;) which lease shall contain all the usual and reasonable covenants, and particularly certain covenants that the said *A. B.* shall allow out of the *first year's rent* of the said premises the sum of pounds, towards the repairs thereof, and that he shall also pay all the taxes in respect of the said house to *Midsummer-day* next; and shall also indemnify the said *C. D.* and his assigns from the ground-rent thereof, during the said term; and that there shall also be inserted in the said lease, an exception against damages happening by fire, to the said premises, during the said term, in consideration whereof the said *C. D.* doth hereby agree to accept such lease, and to execute a counterpart thereof, when tendered to him for that purpose. *As witness, &c.*

Witness,

An agreement for a lease of a garden-ground.

N. B. This agreement must be on a *six shillings* stamp.

86. MEMORANDUM made this day of 1791, between *H. B.* of, &c. and *C. D.* of, &c. as follows, *viz.*—The said *H. B.* in consideration of the rent and agreements herein after-mentioned, doth agree to demise, and let by a good and sufficient lease in the law thereof unto the said *C. D.* ALL that field with the appurtenances thereunto belonging, situate at or near adjoining to, &c. late in the occupation of *E. F.* a gardener, together with all ways, paths, passages, waters, watercourses, easements, privileges and appurtenances whatsoever, to the same belonging or appertaining, or therewith held, used, occupied, possessed, enjoyed, or accepted, reputed, taken or known as part, parcel, or member thereof, or of any part thereof, To hold the same for the term of years, from *Christmas-day* last past, at and under the yearly rent of pounds, payable quarterly, the first payment thereof to be made at *Lady-day* next ensuing the date thereof. AND the said *C. D.* is

D. is to have full and free liberty to lop and top the trees and hedges of the said premises, at seasonable and convenient times, and to plough up and erect upon the same any shed or sheds, or other convenient buildings during the said term, he from time to time scouring and cleansing the ditches, and repairing and making good the fences, hedges, and gates thereof. *AND* the said *C. D.* in consideration thereof *doth* agree to take the aforesaid premises for the said term, and at the said rent, payable in manner aforesaid, and to execute a counterpart of the aforesaid lease; *and also* to scour, and cleanse the ditches, and repair, make good, and keep up the fences, hedges, and gates of the said premises, *As witnesses, &c.*

Witness,

87. MEMORANDUM made this day of
1791, between *H. B.* of, *&c.* and *C. D.* of, *&c.* as follows, *viz.*—The said *H. B.* *doth* hereby agree by good and sufficient conveyances in the law, at or before *Christmas-day* next, to assign, sell, and convey unto the said *C. D.* his heirs and assigns, free from all incumbrances whatsoever and howsoever; ALL those three houses, yards and appurtenances, together with all and every the gates, locks and fixtures, therein and thereon, situate in in the parish of *London*; *AND ALSO* a piece of ground near thereto adjoining, in the possession of *E. F.* esq; to hold unto her the said *C. D.* her heirs and assigns for ever, at and for the price or sum of pounds, of lawful money, *&c.* to be paid unto him by her, on a sufficient title being made out and executed unto her by him: *And also* to assign over unto her the several policies of insurances of the said houses, and to clear, pay, and discharge all taxes, charges, incumbrances, and impositions charged, or assessed on the said premises, unto *Christmas-day* aforesaid, and to indemnify her, or reimburse her on account thereof,

AND the said *C. D.* on her having by the conveyances aforesaid, the said premises assigned and conveyed unto her, at or by the time aforesaid, and in manner aforesaid, *doth* hereby agree to pay unto the said *H. B.* the price or (a) sum aforesaid, for the same, and has now paid unto the said *H. B.* the sum of pounds, in part of the purchase-money aforesaid. *As witnesses, &c.*

An agreement for the purchase of a house and premises.

N. B. This agreement must be on a six shillings stamp.

(a) Note: Let there be a receipt for the money paid in part of the purchase.

An agreement
for building a
house.

N. B. This a-
greement must
be on a six shil-
lings stamp.

88. MEMORANDUM made this day of
1791, between *H. B.* of, &c. of the one part, and *C. D.*
of the other part, as follows:—The said *C. D.* for the
consideration herein after-mentioned, *doth* agree with the
said *H. B.* that he the said *C. D.* or his assigns, will with-
in the space of *three calendar months* next following the day
of the date of these presents, find and provide all fit and
proper materials and things, and erect, build, and finish, in
a good, sound, substantial, and workman-like manner, one
brick-house or building, on a piece or parcel of waste
ground situate, &c. according to a plan thereof hereunto
annexed, and of the dimensions following, *viz.* (*here in-
sert the dimensions of the building, and scantlings of the timber
intended to be used in the building thereof*) AND the said *H. B.*
for the considerations aforesaid, *doth* agree with the said *C. D.*
well and truly to pay, or cause to be paid, unto the
said *C. D.* the sum of pounds, of lawful money of
Great Britain, in manner following, that is to say
pounds part thereof as soon as the foundation of the said
house shall be laid, pounds other part thereof when
the brick-work of the said house shall be carried up and
tiled in, and the remaining pounds, being in full
payment of and for building the said house, when the same
shall be completed, inside and out, fit for occupation, *sub-
ject* to the approbation of *E. F.* surveyor to the said *H. B.*
AND LASTLY, the said *H. B.* and *C. D.* *do* further agree by
these presents, to execute to each other, with all convenient
speed, an article of agreement in the penalty of
pounds, for the true performance of all and every the mat-
ters and things aforesaid, *As witnesses, &c.*

Witness,

An agreement
for letting a
ready furnished
lodging.

N. B. This a-
greement must
be on a six shil-
lings stamp.

89. MEMORANDUM made this day of
1791, between *H. B.* of the parish of in the
county of grocer, and *C. D.* of, &c. gent. as
follows;—First the said *H. B.* agrees to let unto the
said *C. D.* a room up two pair of stairs forwards in his
house situate in street, in the parish and county
aforesaid, ready furnished; together with the use of his
maid-servant, in common with other lodgers, at such hours
and times when he himself can spare her, *And also* the use
of a cellar for coals and beer, at and after the rate of
pounds

pounds a year, payable quarterly. *And* it is further agreed, that if either party shall quit or leave the said premises, he or they respectively are to give or take a quarter's warning. The said *C. D.* agrees to take the said room of the said *H. B.* at the rate or price, and payable as aforesaid, *And also* to find or provide for himself all manner of linen, and china-ware, whatsoever, that he shall have occasion to make use of therein. And that if he shall damage or break any part of the furniture of the said *H. B.* that he will amend, make good, or pay her for the repairing the same again. *As witness, &c.*

Witness,

NOTE: The foregoing agreements, if not complied with by either party, may be established in a court of equity; or an action upon the case will lie to recover damages for non-performance of such agreement.

90. THIS INDENTURE made the day of in the year of the reign of our sovereign lord George the Third, by the grace of God of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord , BETWEEN *J. S.* of, *&c.* of the one part, and *G. T.* of, *&c.* of the other part; WITNESSETH, That for and in consideration of the yearly rent, covenants, and agreements herein after contained on the part and behalf of the said *G. T.* his executors, administrators and assigns, to be paid, done, and performed. *He* the said *J. S.* hath demised, set, and to farm let, and by these presents doth demise, set, and to farm let, unto the said *G. T.* ALL (*here insert the premises demised, with a particular description thereof*) situate, standing and being in street in the parish of , in the county of , and adjoining on the South part thereof to the premises lately in the tenure or occupation of *H. T.* together with all cellars, solars, chambers, rooms, yards, gardens, lights, easements, ways, passages, waters, water-courses, profits, commodi-

A LEASE (a). of an house for seven years. with the usual covenants.

1st. The demise.

2dly. Premises.

(a) All leases being deeds, must be impressed with the following distinct duties, viz. Six-pence by stat. 5 & 6 W. & M. c. 21. f. 3. Six-pence by 9 & 10 W. 3. c. 25. f. 30. Six-pence by 12 Ann. st. 2. c. 9. f. 21. One shilling by 30 Geo. 2. c. 19. f. 1. One shilling by 16 Geo. 3. c. 34. f. 5. One shilling and six-pence by 17

Geo. 3. c. 50. f. 17. and one shilling by 23 Geo. 3. c. 58. f. 1. These duties amount to six shillings exactly, but the distinction between the Stamp Office dies for Agreements and Deeds, makes the difference. See this fully explained in Rayner's Pref. to his Observ. on Stamp Duties, stat. 28, 29.

The Habendum.

3dly. The Redendum.

4thly. Covenant to pay the yearly rent.

5thly. And, that the lessee, &c. will repair the premises during the term.

ties, and appurtenances whatsoever, to the said messuage or tenement and premises belonging, or in any-wise appertaining. To HAVE AND TO HOLD the said messuage or tenement, and premises, herein before-mentioned, or intended to be hereby demised, with their and every of their appurtenances unto the said *G. T.* his executors, administrators and assigns, from the feast day of *the Nativity of St. John the Baptist*, now next ensuing the date of these presents, for and during, and unto the full end and term of *seven years* from thence next ensuing, and fully to be complete and ended. YIELDING AND PAYING therefore yearly and every year during the said term of *seven years*, unto the said *J. S.* his executors, administrators, and assigns, the yearly rent or sum of pounds, of lawful money of *Great Britain*, at the four most usual feast days, or times of payment of rent in the year; (that is to say) *the feast day of St. Michael the Archangel, the Birth of our Lord Christ, the Annunciation of the Blessed Virgin Mary, and the Nativity of St. John the Baptist*, by even and equal portions, the first payment thereof to begin and be made on the *feast day of St. Michael the Archangel* now next ensuing. AND the said *G. T.* for himself, his executors, administrators and assigns, doth covenant, promise and agree, to and with the said *J. S.* his executors, administrators and assigns, by these presents in manner and form following; (that is to say) that he the said *G. T.* his executors, administrators and assigns, or some or one of them, shall and will yearly, and every year during the said term of *seven years*, hereby demised, well and truly pay, or cause to be paid, unto the said *J. S.* his executors, administrators or assigns the said yearly rent or sum of pounds, hereby reserved in the manner and proportions, and on the days and times above limited and appointed for payment thereof, according to the true intent and meaning of these presents. AND ALSO shall and will, at his, their, or some or one of their own proper costs and charges from time to time, and at all times hereafter during the said term hereby granted, when, where, and as often as need or occasion shall be or require, well and sufficiently repair, support, uphold, sustain, maintain, pave, purge, empty, cleanse, scour, glaze, amend and keep the said messuage or tenement, and premises hereby demised, and every part thereof with the appurtenances thereunto belonging, in, by, and with all manner of needful and necessary reparations, supportations, glazings,

ings, pavings, purgings, scourings, cleansings, emptyings and amendments whatsoever; and the said messuage or tenements with the appurtenances hereby demised, so well and sufficiently upheld, sustained, maintained, repaired, paved, purged, emptied, cleansed, scoured, glazed, amended, and kept at the end, or other sooner determination of this lease, which shall first happen, shall and will peaceably and quietly leave, surrender, and yield up, unto the said J. S. his executors, administrators or assigns, *together* with all such fixtures and things as are mentioned, or set forth in the schedule or inventory thereof hereunder written, in as good plight and condition as the same now are, (reasonable use and wearing thereof, and all inevitable accidents by fire, which may happen to burn down and consume the premises or any part thereof, in the mean time only excepted). AND FURTHER, that it shall and may be lawful to and for the said J. S. his executors, administrators and assigns, with workmen and others, or without, twice or oftener in every year during the time hereby granted, at all convenient times in the day-time to enter and come into and upon the said demised premises, and every or any part thereof, there to view, search, and see, whether the same be well and sufficiently supported, upheld, sustained, maintained, repaired, purged, emptied, cleansed, scoured, glazed, and amended, as the same ought to be according to the true intent and meaning of these presents, and of all the defects, defaults, decays, lacks, and wants of reparations, and amendments, which upon every or any such view or views shall be found, to give or leave notice or warning in writing at the said demised premises, or some part thereof, unto or for the said G. T. his executors, administrators or assigns, within the time or space of *three months* from thence next following; within which said time or space of *three months* after every such notice or warning shall be given or left as aforesaid, the said G. T. for himself, his executors, administrators and assigns, *doth* covenant, promise and agree, to and with the said J. S. his executors, administrators and assigns, by these presents, from time to time during this demise, well and sufficiently to repair and amend the same accordingly. PROVIDED *always*, that if it shall happen that the said yearly rent of pounds, or any part thereof shall be behind or unpaid for the space of 28 days, next over or after any of the said feast days, or times of payment, on which the

6thly. And at the determination thereof leave the same in good repair, &c.

7thly. And that the lessor may enter and view the same, &c.

8thly. Cause of re-entry for non-payment of rent, or non-performance of the covenants.

Covenant for
re-entry.

9thly. Covenant
for quiet enjoy-
ment.

same ought to be paid as aforesaid, being lawfully demanded; or if the said *G. T.* his executors, administrators or assigns, and each and every of them, do not in and by all things well and truly observe, perform, fulfil and keep all and singular the covenants, grants, articles and agreements in these presents contained, which on his and their parts and behalfs are or ought to be observed, performed, fulfilled and kept according to the true intent and meaning of these presents, that then, and from thenceforth in any such case, and at all times then after, it shall and may be lawful to and for the said *J. S.* his executors, administrators or assigns, into the said messuage or tenement and premises hereby demised, or into any part thereof in the name of the whole, wholly to re-enter, and the same to have again, repossess and enjoy as in his and their first and former estate, and the said *G. T.* his executors, administrators and assigns, and all other the occupiers of the said premises, thereout and from thenceforth utterly to expel, put out, and amove, this indenture or any thing herein contained to the contrary thereof in any-wise notwithstanding.

AND LASTLY, the said *J. S.* for himself, his executors, administrators and assigns, *doth* covenant, promise and agree, to and with the said *G. T.* his executors, administrators and assigns, by these presents, that he the said *G. T.* his executors, administrators and assigns, paying the said yearly rent herein before reserved at the place, and on the several feast days and times before limited, and appointed for payment thereof, and observing, performing, paying, fulfilling and keeping, all and singular the payments, covenants, grants, articles, provisos, conditions and agreements, in these presents contained, which on his, and their parts and behalfs, are or ought to be observed, performed, fulfilled and kept according to the true intent and meaning of these presents, shall and lawfully may, peaceably and quietly have, hold, occupy, possess and enjoy the said demised premises, with their and every of their appurtenances during the said term of years hereby granted, without the lawful let, suit, trouble, molestation, denial or eviction, of or by the said *J. S.* his executors, administrators or assigns, or any of them, or of, or by any other person or persons whatsoever, lawfully having, or claiming to have, any right, title, or interest, in or to the said demised premises with the appurtenances, or in, or to any part or parcel thereof, by, from, or under the said *J. S.* his executors,

cutors, administrators or assigns, or any of them, or by. or thro' his, their, or any of their means, consent, or procurement, IN WITNESS *whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.*

NOTE: *When it is a running term, this proviso must be added before the words,* IN WITNESS.—“ AND LASTLY, it is hereby declared and agreed by and between the said parties hereto, and these presents are upon this express condition nevertheless, that in case the said G. T. his executors, administrators or assigns, shall be minded or desirous to quit or leave the said hereby demised premises, at the end or expiration of the first years, of the said term of years hereby demised, and shall and do give notice in writing under his, their, or any of their hands, of such, his, their, or any of their intention and desire, to or for the said J. S. his executors, administrators or assigns, at his or their dwelling-house, or last place of abode, *six calendar months* before the end or expiration of the first years of the said term of years hereby demised, that then, and in such case, it shall and may be lawful to and for the said G. T. his executors, administrators and assigns, and every of them, to quit and leave the said hereby demised premises, at the end of the said first years of the said term hereby demised, according to such notice so to be given or left as aforesaid; he or they first paying all rent then due and in arrear, and leaving the premises in repair, pursuant to the covenants aforesaid. AND in case the said J. S. his executors, administrators or assigns, shall likewise be minded and desirous to take the said premises into his or their own hands, at the expiration of the said first years, and of such his, their, or any of their intention or desire, shall give or leave notice in writing at the said premises, to or for the said G. T. his executors, administrators or assigns, *six months* before the expiration of the said first years, that then and in such case the said J. S. his executors, administrators or assigns, shall be at liberty to enter upon and take possession of the said premises, at the expiration of the said first years of the term hereby demised, according to such notice so to be given or left as aforesaid, any thing herein before contained to the contrary in any-wise notwithstanding (a).

NOTE: How the lease must be drawn when it is a running term.

(a) Note: This proviso is

mutual, which must be varied according to the nature of the agreement between the parties.

A lease of a farm, by husband and wife, of the wife's lands, with the usual covenants respecting husbandry.

N. B. For the necessary stamps see note (a) page 37.

Premises.

Except all timber, &c.

Habendum.

91. THIS INDENTURE made the day of in the year of the reign of our sovereign lord *George* the Third by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. and in the year of our Lord BETWEEN *T. C.* of, &c. esq; and *M.* his wife (which said *M.* is the only daughter and heir at law of *J. K.* esq; her late father deceased) of the one part, and *T. M.* of, &c. yeoman, of the other part, WITNESSETH, that for and in consideration of the rents, covenants and agreement, herein and hereby mentioned and reserved, on the part and behalf of the said *T. M.* his executors, administrators and assigns, to be observed, paid, done and performed. *They* the said *T. C.* and *M.* his wife *have* demised, leased and to farm let, and by these presents *do* demise, lease and to farm let, unto the said *T. M.* his executors, administrators and assigns, ALL that messuage, tenement, or farm-house commonly called or known by the name of with all houses, edifices, buildings, barns, stables, orchards, yards, gardens, back-sides, closes, lands, meadows, pastures, wood-grounds, ways, passages, commodities and appurtenances whatsoever, thereunto belonging and appertaining, containing by estimation acres more or less, situate, lying and being in the several parishes of and in the said county of and which now and for some time last past have been in the tenure or occupation of the said *T. M.* except and always reserved out of this present demise unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* ALL, and all manner of timber, and timber-like trees, bodies of pollards and other trees, young storeyers of oak, ash, aspe, elm, and beech likely to make timber of pollards, and all warriors now standing, growing or being, or which during the term hereby demised shall be standing, growing, or being, in, upon, or about the above demised premises, or any part thereof, *with* free liberty of ingress, egress and regress, to and for the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* with servants, horses, carts, and carriages, to fell, cut down, cart, and carry away the same at such times as the underwood shall be felled, where such timber shall stand, and not doing any wilful hurt, spoil, or damage to the corn, grain or grass, of the said *T. M.* his executors, administrators or assigns, then growing upon the premises aforesaid. TO HAVE AND TO HOLD the said messuage and premises above-mentioned,

mentioned, to be hereby demised with the appurtenances (except as before excepted) unto the said *T. M.* his executors, administrators and assigns, from the feast day of *St. Michael the Archangel* next preceding the date of these presents, for and during, and unto the full end and term of

years from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year during the said term, unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* the yearly rent or sum of pounds, of lawful money of Great Britain, at the two most usual feasts or days of payment of rent in the year; (that is to say) the feast of the Annunciation of the Blessed Virgin Mary, and *St. Michael the Archangel*, by even and equal portions. AND ALSO YIELDING AND PAYING unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* for every acre of the demised premises that are and have been used for meadow, pasture, and hedge-greens; And also all that little pightle in which he the said *T. M.* his executors, administrators or assigns, or any of them, shall plough, break up, or convert into tillage, the yearly rent of

Reddendum.

at or upon the feast-days and times above-mentioned, and so after that rate for every greater or lesser quantity thereof than one acre over and above the yearly rent hereby before reserved. AND the said *T. M.* for himself, his heirs, executors, administrators and for every of them, doth covenant, promise and agree to and with the said *T. C.* and *M.* his wife; and the heirs and assigns of the said *M.* in manner following; (that is to say) that he the said *T. M.* his executors, administrators or assigns, or some or one of them, shall and will well and truly pay or cause to be paid unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* the yearly rent hereby before reserved at the days and times and by their proportions above-mentioned and appointed for payment thereof, according to the true intent and meaning of these presents; AND that he the said *T. M.* his executors, administrators and assigns, and every of them, shall and will, at their own proper costs and charges during the said term hereby demised, repair, uphold, pale, support, amend, maintain and keep the messuage, barns, stables and out-houses, edifices and buildings, above demised; And also hedge, ditch, scour, cleanse, and in good repair keep all and singular the hedges, ditches, gates, stiles, fences and quicksets; and preserve all young storeyers

Covenant to pay the yearly rent;

and that the lessee, &c. will repair, &c. &c.

and at the end thereof leave the same in good repair, &c.

and shall lay the corn and hay in the barns, &c. and spend the stover on the premises,

and shall not double crop, &c. but till the same according to the course of the country, &c.

storeyers of oak, ash, aspe, beech and elm likely to become timber, and preserve the fruit-trees growing in the orchards, and other the demised premises, from the hurt and spoil of cattle, or any other wilful or negligent spoil, and if any of the said trees die, to plant new ones in the room and instead thereof. And the said messuage, barns, stables, edifices and buildings so as aforesaid repaired, upheld, paled, raised, supported, amended, maintained and kept, and the hedges, ditches, gates, stiles, storeyers, fruit-trees and fences so hedged, ditched, fenced, scoured, cleansed, and the quicksets preserved in good repair, shall and will, at the end and expiration or other sooner determination of this present lease, peaceably and quietly leave, surrender and yield up the same, and all and every of them, unto the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* AND that he the said *T. M.* his executors, administrators and assigns, and every of them, shall, during the said term, lay all the corn and hay growing in and upon the said premises into the barns, and spend the same upon the premises; and shall not employ, sell, or carry away, or suffer to be sold or carried off or from the said demised premises to be elsewhere employed, any straw, stover, soil or dung whatsoever, which shall arise or be made thereon, nor spend nor waste the straw and stover upon any pretence whatsoever, otherwise than to make dung thereof, and all the mud and dung which they shall make in the highways thereto adjoining, shall lay or leave the same to or upon the said premises, there to be spent and not elsewhere (*except* all such hay as shall be growing upon the premises, in the last year of the term hereby demised, when it shall and may be lawful to and for the said *T. M.* his executors, administrators and assigns, if they leave the said premises, to carry off and spend it elsewhere.) AND FURTHER that he the said *T. M.* his executors, administrators and assigns shall not, nor will at any time during the said term cross crop, or double crop any part of the said premises, but according to the course of husbandry in the country where the premises do lie, but shall keep the usual and ordinary seasons for tilling thereof (that is to say) the *first* year *wheat, rye, or barley*, the *second* year *Lent corn*; and shall not sow any barley in any one year of the said term, unless it be upon a summer's fallow: And shall and will, during the term hereby demised, permit and suffer *thirty* acres more of the arable land hereby demised to lie in pasture, and that he the said *T. M.* his executors,

executors administrators or assigns, shall leave *fifty acres* of the said demised premises for fallow in the last year of the term hereby demised, which it shall and may be lawful to and for the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* to enter on, at the *feast of the Annunciation of the Blessed Virgin Mary* next before the end of the said term hereby demised, to stir, dress and manure the same, and to take all such dung as shall be left in or about the yards, to lay on such fallow, and to take and have stable-room for horses, and lodging room for servants for doing thereof. AND that he the said *T. M.* his executors, administrators, or assigns, shall not, nor will cut, lop, or top, or make any hedges, but when the fields whereto they belong are sowed with *winter corn*, and that at seasonable times of the year, and shall not, nor will make up any of the hedges, fell or cut the underwood, nor lop nor top the pollards of or belonging to the said premises, or any part thereof under years growth. AND the said *T. C.* for himself, and for the said *M.* his wife, and her heirs, executors, and administrators, *doth* by these presents covenant, promise, and agree, to and with the said *T. M.* his executors, administrators, and assigns, in manner following (that is to say) that for as much as the premises aforesaid are copyhold, and cannot be leased for any longer term than for years; and at the end of this demise he the said *T. C.* and *M.* his wife, or one of them (the covenants of the said lease being performed by the lessee, his executors, and administrators) shall and will, at the request, half costs and charges, of the said *T. M.* his executors, or administrators, make, grant, seal, and execute the like lease, with this present lease for years longer; and at the end of years upon the request as aforesaid, the like lease for years longer, and so for years to years, for and during the term of years. AND the said *T. C.* for himself, and for the said *M.* his wife and her heirs, executors, administrators and assigns, and for every of them, *doth* by these presents further covenant, promise and agree to and with the said *T. M.* his executors, administrators, and assigns, that they the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* shall and will from time to time, and at all times during this present demise, on reasonable request to him, her, or them made by the said *T. M.* his executors, administrators, or assigns, or any of them, and at seasonable times in the year,

The premises being copyhold, the lessors covenant to make a further lease to the lessee.

Covenant to allow to the lessee bricks, tiles, and timber for repairs, &c.

year, assign, appoint, and allow unto the said *T. M.* his executors, administrators, or assigns, brick and tile at the nearest kiln to the said messuage, and sufficient rough timber on the premises hereby demised or elsewhere, within *two miles* of the said messuage, for all manner of reparations of the said premises hereby demised. AND that the said *T. M.* his executors, administrators, and assigns, shall and may have and enjoy the use of the yards and barns belonging to the said premises, stable-room for his horses, and house-room for himself and servants, for the threshing and spending of the last year's crop, growing and arising upon the premises hereby demised until the day of next, after the end of this demise; and that it shall and may be lawful to and for the said *T. M.* his executors, administrators and assigns, for and under the several rents hereby reserved, and the covenants which on his and their parts are and ought to be paid, performed, and kept, peaceably and quietly to have, hold and enjoy the said messuage and premises aforesaid (*except as before excepted*), during the term hereby demised, without the lawful let, suit, trouble, or interruption of the said *T. C.* and *M.* his wife, or the heirs or assigns of the said *M.* or any of them. PROVIDED ALWAYS, and on this consideration *nevertheless*, that if it shall happen the said yearly rent of pounds, or any part thereof, shall be behind or unpaid by the space of days next, over or after either of the said feasts, or days of payment aforesaid, in the several years aforesaid, in which the said several sums ought to be paid as aforesaid. Or if the said *T. M.* his executors, administrators or assigns, or any of them, do and shall assign or make over this present indenture of lease of the premises hereby demised, or any part thereof, for any term or time whatsoever, without the licence and consent of the said *T. C.* and *M.* his wife, or the heirs, or assigns of the said *M.* first had and obtained in writing under his, her, and their hands and seals for that purpose; that then, and from thenceforth it shall and may be lawful to and for the said *T. C.* and *M.* his wife, and the heirs and assigns of the said *M.* into the said demised premises, or any part thereof, in the name of the whole wholly to re-enter, and the same to have again, retain, repossess, and enjoy as in his, her, and their first and former estate and estates; and the said *T. M.* his executors, administrators, and assigns, and all other occupiers thereof from thenceforth utterly to expel and put out, any thing

And for quiet enjoyment.

Clause of re-entry for non-payment of rent, or if the lessee assigns without licence.

thing herein contained to the contrary thereof in any-wise notwithstanding. *In witness, &c.*

Scaled and delivered, &c.

Note, The foregoing lease must be altered according to the agreement between the landlord and farmer, and according to the nature and custom of husbandry in the county where the land lies.

92. TO ALL TO WHOM these presents shall come, *H. T.* of, *&c.* esq; sends greeting: WHEREAS by indenture of lease dated the day of last, and made between *E. G.* of, *&c.* widow of the one part, and *T. C.* of, *&c.* victualler, of the other part, for the considerations therein mentioned, the said *E. G.* DID demise, lease, grant, and to farm let, unto the said *T. C.* ALL those two messuages or tenements (formerly three messuages or tenements), yards and passage thereunto belonging, with their and every of their appurtenances, situate, lying and being in in the said parish of , as therein mentioned, and then and now in the possession of the said *T. C.* TO HOLD to the said *T. C.* his executors, administrators and assigns, from the feast day of the *Annunciation of the Blessed Virgin Mary* then last past, for and during, and unto the full end and term of years, from thence next ensuing, and fully to be complete and ended; together with all such goods and things as were mentioned and expressed in the schedule thereunto written, AT and under the rent of a pepper-corn, payable on the feast day of the *Annunciation of the Blessed Virgin Mary* last past for the first year of the said term thereby demised, and the yearly rent of pounds, during the residue and remainder of the said term hereby demised, payable quarterly, by even and equal portions, the first payment thereof to begin and be made on the feast day of *St. John the Baptist* now next ensuing. In which said lease (*amongst other covenants*) was contained a covenant, that the said *T. C.* his executors, administrators and assigns, should, before the feast of the *Annunciation of the Blessed Virgin Mary* last past, well and truly pay, lay out and expend the sum of pounds, of lawful money of *Great Britain*, in and upon the necessary and substantial repairs of the messuages or tenements and premises thereby demised. AND WHEREAS the said *T. C.* has since the date of the said lease, in pursuance and part performance of the

A Deed Poll, or Indemnity given to a person on assigning a lease to another, to protect him against the covenants of such lease.

N. B. The like stamp by the same acts, for the same reason.

said

said covenants, accordingly paid, laid out, and expended the sum of pounds of lawful money of *Great Britain*, in and upon the necessary and substantial repairs of the said messuages or tenements, and premises, as appears by the several workmen's bills and receipts thereupon given. AND WHEREAS the said *H. T.* hath agreed to take the said messuages or tenements, and premises, on the said feast day of *St. John the Baptist* now next ensuing, and the said *T. C.* has delivered unto the said *H. T.* the said several workmen's bills and receipts thereon; and has also paid or deposited in his hands the sum of pounds in pursuance and in full thereof, and also paid or deposited in his hands the further sum of pounds, for the same quarterly payment of the rent due for the said premises, on the performance of the said covenant for the repairs of the said premises, from the day of the date hereof, and likewise in pursuance of the said agreement has, on the day of the date hereof, bargained, sold and assigned over the said lease of the said premises thereby demised unto the said *H. T.* for the rest, residue and remainder yet to come and unexpired, of the said term of years, as in and by the said lease and assignment thereof, relation being thereunto had, may more fully and at large appear. Now KNOW YE that I the said *H. T.* as well for the considerations aforesaid, as also in consideration of the sum of pounds, of lawful money of *Great Britain*, to me in hand paid by the said *T. C.* at or before the sealing and delivery thereof, (the receipt whereof is hereby acknowledged), do hereby for myself, my heirs, executors, and administrators, covenant, promise, and agree, to and with the said *T. C.* his executors and administrators, that I the said *H. T.* my executors and administrators, shall and will, from time to time and at all times hereafter, save, defend and keep harmless and indemnify him the said *T. C.* his heirs, executors and administrators, and his and their lands and tenements, goods and chattels, of, from, and against all and every the covenants, clauses, provisoes, conditions and agreements whatsoever mentioned, expressed, reserved and contained in the said lease, on the tenant's or lessee's part and behalf thereof, to be paid, kept, done, and performed. And also of and from all and all manner of action and actions, suit and suits whatsoever, brought or to be brought, commenced, or prosecuted, against the said *T. C.* his executors or administrators, for, on account of, or concerning the said lease

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lease or the said premises thereby demised; or otherwise howsoever relating to the same. IN WITNESS whereof I the said *H. T.* have hereunto set my hand and seal the day of in the year of our Lord .

Sealed and delivered (being first duly stamped) in the presence of us. }

93. THIS INDENTURE made the day of , in the year of the reign of our sovereign lord *George the Third*, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord

of the parish of , in the city of , widow and administratrix of *E. H.* of the same parish and city, carpenter, her late husband, deceased, of the one part, and *C. D.* of , in the county of , of the other part.

WHEREAS by indenture of lease bearing date the day of which was in the year of our Lord , and

made between *S. D.* of in the county aforesaid, of the one part, and *E. H.* of in the parish of ,

citizen and carpenter, of the other part; he the said *S. D.* for the considerations therein mentioned, did demise, and to farm let, unto the said *E. H.* ALL those two messuages or tenements and premises, situate, lying, and being on the

South side of , in the county of , which said houses are abutting on a passage leading from , part

of the said houses being built against the said passage, and then late in the several tenures or occupations of *I. S.* and *B. G.* widow, as the said premises are particularly described in the map or ground-plot thereunto annexed, together

with all vaults, lights, easements, ways, passages, waters, water-courses, and appurtenances, which of right belong to the said premises, and except any door-ways, or water-

courses going into . To HOLD the same premises unto the said *E. H.* his executors, administrators, and assigns, from the feast day of *the birth of our Lord Christ* then last past, for and during and unto the full end and term of

years from thence next ensuing, and fully to be complete and ended, at and under the yearly rent of

pounds of lawful money of *Great Britain*, payable quarterly, free from all taxes, duties, rates, and assessments whatsoever. AND WHEREAS the said *E. H.* lately departed

E this

An absolute assignment of a lease, together with the policies of insurance insured thereon, by the administratrix of the lessee.

The like stamps, by the same acts, for the same reason.

Recital of the lease.

Precedents of Assignments.

this life intestate, and letters of administration of the goods and chattels, rights and credits, of the said *E. H.* were granted unto the said *C. H.* party hereto, as by reference to the said recited indenture of lease, and letters of administration being had, will more fully appear. AND WHEREAS the said *C. D.* has contracted and agreed, to and with the said *C. H.* for the purchase of the said herein before mentioned premises, for the remainder of the said term of years, which is now to come therein and unexpired, at or for the price or sum of pounds. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the said sum of pounds of lawful money of *Great Britain*, to the said *C. H.* in hand well and truly paid by the said *C. D.* at or before the sealing and delivery of these presents, the receipt whereof the said *C. H.* doth hereby acknowledge, and thereof and of and from every part thereof doth acquit, release, and discharge the said *C. D.* his heirs, executors and administrators, for ever by these presents: she the said *C. H.* hath granted, bargained, sold, assigned and set over, and by these presents doth fully and absolutely grant, bargain, sell, assign, and set over, unto the said *C. D.* ALL those two messuages or tenements, then late in the several tenures or occupations of *I. S.* and *B. G.* widow: And also all that brick messuage or tenement lying behind one of the said messuages or tenements now or late in the tenure or occupation of *I. S.* which said last mentioned messuage or tenement was erected and built by the said *E. H.* on the said premises, since the commencement of the herein before recited indenture of demise; and all and singular other the premises with their and every of their appurtenances thereunto belonging or appertaining, or therewith usually held, occupied, or enjoyed, together with the said recited indenture of lease: And all the estate, right, title and interest, both legal and equitable, of her the said *C. H.* of, in, and to the same, by virtue of the same indenture of lease, TO HAVE AND TO HOLD the said three several messuages or tenements, and other the premises, with their and every of their appurtenances, unto the said *C. D.* his executors, administrators and assigns, from *Lady-day* next ensuing the day of the date of these presents, for and during all the rest, residue and remainder of the said term of years, in and by the said recited indenture of lease granted, which is now to come and unexpired, *subject* only to the rents and covenants therein mentioned,

Assignment
thereof.

To have and to
hold for the re-
mainder of the
term.

tioned, reserved and contained from and after *Lady-day*, on the tenant or lessee's part and behalf to be paid, kept, done and performed; AND the said *C. H.* doth for herself, her heirs, executors and administrators, covenant, promise and agree to and with the said *C. D.* his executors, administrators and assigns, by these presents in manner following (that is to say) that the said recited indenture of lease, now at the time of the sealing and delivery hereof, is a good and valid lease in the law of the premises thereby demised, and now is, and stands in full force and virtue, not forfeited, surrendered, or otherwise incumbered, or made void or voidable by her or the said *E. H.* deceased. AND ALSO that she the said *C. H.* now at the time of the sealing and delivery hereof, hath in herself good right, full power, and lawful and absolute authority, to assign and transfer all and singular the said premises, with their appurtenances, unto the said *C. D.* his executors, administrators and assigns, in manner and form aforesaid, according to the true intent and meaning of these presents. AND ALSO that it shall and may be lawful to and for the said *C. D.* his executors, administrators and assigns, from henceforth peaceably and quietly to have, hold, occupy, possess and enjoy, all and singular the said premises, with their and every of their appurtenances, from *Lady-day*, and to receive the rents, issues and profits thereof, to his and their own use and benefit, for and during all the rest, residue and remainder which is now to come and unexpired of and in the said term of years, by the said recited indenture of lease granted, without any let, suit, or interruption, of or by the said *C. H.* or any other person or persons, claiming or to claim, by, from, or under her or the said *E. H.* deceased; and that the said hereby assigned premises now are and be free and clear of and from all incumbrances whatsoever had, made, done, or suffered by the said *C. H.* or the said *E. H.* deceased, or any other person or persons whatsoever claiming, or to claim, by, from, or under her or him, the said yearly rent reserved by the said recited indenture of lease, and the covenants therein contained, which on the tenants or lessees part and behalf shall from *Lady-day* aforesaid grow due, and ought to be paid, kept, done and performed; (*only excepted.*) AND FURTHER that she the said *C. H.* and all and every other person and persons claiming or to claim any estate or interest of in or to the said premises, or any part thereof by,

E 2

from

Covenant that the lease is in force, not void or voidable;

and that the assignor hath power to assign.

And for quiet enjoyment to the assignee.

And that the premises are free from incumbrances.

And for further assurances.

Precedents of Assignments:

Covenant by
the assignee to
pay the rent,
and to save the
assignor harm-
less.

Assignment of
policies of in-
surance.

from or under her or the said *E. H.* deceased, shall and will at any time hereafter, upon the request and at the cost and charges of the said *C. D.* his executors, administrators or assigns, make, do, and execute all and every such further and other lawful and reasonable acts, deeds, assignments and assurances in the law whatsoever, for the better strengthening and confirming the assignment hereby made of all and singular the said premises, with their appurtenances, for and during all the remainder which shall be then to come and unexpired of the said term of years, unto the said *C. D.* his executors, administrators and assigns, as by him or them, or his or their counsel learned in the law, shall be reasonably devised, or advised, and required. AND the said *C. D.* *doth* for himself, his heirs, executors or administrators, covenant, promise, and agree to and with the said *G. H.* her executors and administrators, by these presents, that he the said *C. D.* his executors, administrators or assigns, shall and will from time to time and at all times hereafter, during the remainder now to come and unexpired, of the said term of years, in and by the said recited indenture of lease granted, well and truly pay, or cause to be paid, the said yearly rent by the said indenture of lease reserved, and perform all and singular the covenants and agreements therein contained, and which from and after *Lady-day* last past, on the tenants or lessees part and behalf are or ought to be paid, kept, done, and performed, and of and from all actions, suits, recoveries, judgments, executions, costs, charges, damages and expences whatsoever, that shall or may be commenced, obtained, recovered, or prosecuted against the said *C. H.* her executors or administrators, for or on account of the non-payment of the rent, or non-performance of the said covenants and agreements, or any of them, from and after *Lady-day* aforesaid, shall and will, well and sufficiently, save harmless and keep indemnified the said *C. H.* her heirs, executors, or administrators, their and each and every of their lands or tenements, goods and chattels. Now THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, she the said *C. H.* *hath* bargained, sold, assigned, and set over, and by these presents *doth* bargain, sell, assign and set over, unto the said *C. D.* his executors, administrators and assigns, *two* several instruments or policies of insurance, by which the herein before recited premises are insured from fire in the *Hand-in-Hand* insurance-office,

office, bearing date respectively the day of , in the year , and day of , in the year , and which said two policies are numbered as follows: No. 72504 and No. 47678; and all and every sum and sums of money thereby insured, and which may at any time or times hereafter become due, or payable by virtue thereof, together with all the right, title, property, benefit, and interest of her the said *C. H.* of in and to the said two several instruments or policies of insurance, with all powers and remedies for the recovery thereof. *In witness, &c.*

Sealed and delivered, &c.

94. TO ALL TO WHOM these presents shall come *E. U.* of , in the county of , executor of the last will and testament of *H. I.* late of , in the county aforesaid, gentleman, deceased, *sends greeting*: WHEREAS by several deeds poll, or policies of insurance, numbered as follows, *viz.* No. 4888 and No. 4889, and bearing date respectively the day of , in the year of our Lord , and the day of , in the year of our Lord , and executed by *D. C.* and others, the trustees or directors of the *Hand-in-Hand* fire-office, two several sums of pounds, and pounds, are thereby insured from fire from the date hereof for the two several terms of years, and years, by the said *E. U.* his executors, administrators and assigns, on two several timber-houses, situate on the South-side of , in the parish of aforesaid, being the *third* and *fourth* houses Westward from , and then, or now, or late in the several possessions of one *R. B. W. M.* of , in the parish of aforesaid, as by the said two several deeds poll, or policies of insurance, reference being unto them respectively had, may more fully appear. NOW KNOW YE, that the said *E. U.* for and in consideration of the sum of pounds, to him in hand paid by the said *W. M.* (the receipt whereof is hereby acknowledged) *hath* bargained, sold, assigned, and set over, and by these presents *doth* absolutely bargain, sell, assign, and set over, unto the said *W. M.* his executors, administrators and assigns, the aforesaid two several recited deeds poll, or policies of insurance, and the monies that shall or may become due thereon, and all benefit and advantage thereof,

An assignment of policies of insurance by deed poll.

The like stamps, by the same acts for the same reasons.

Precedents of Assignments.

and all the said *E. U.*'s right, title, and interest, of in and to the same respectively; AND the said *E. U. doth* also hereby authorize, and empower the said *W. M.* his executors, administrators, and assigns, in his or their own name or names, but to and for his and their own proper use, or for and in the name of the said *E. U.* his executors or administrators, to receive of and from the said trustees or directors, or their successors, the said monies that shall or may become due on the aforesaid two several recited deeds poll, or policies of insurance, and on non-payment thereof, or any part thereof, to sue for, recover and receive the same, and on payment thereof, or any part thereof, to give receipts, acquittances, or other discharges for the same; and all and whatsoever the said *W. M.* his executors, administrators and assigns, shall lawfully do, or cause to be done, in and about the premises aforesaid; the said *E. U. doth* hereby ratify, confirm, and allow, as fully and effectually as if he himself was personally present, and did the same, hereby granting unto him and them his full and whole power and authority in and about the aforesaid premises. IN WITNESS whereof the said *E. U.* hath hereunto set his hand and seal the day of , in the year of our Lord .

*Scaled and delivered (being first duly }
stamped) in the presence of }*

The form of a lease in ejectment, where the premises are uninhabited, to recover possession.

The like stamps, by the same acts, for the same reasons.

95. THIS INDENTURE made the day of , in the year of the reign of our sovereign lord *George the Third*, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord , BETWEEN *D. E.* of, *&c.* esq; of the one part, and *F. G.* of, *&c.* yeoman, of the other part, WITNESSETH, that he the said *D. E.* for divers good causes and considerations him thereunto moving, *hath* demised, granted, and to farm letten, and by these presents *doth* demise, grant, and to farm let, unto the said *F. G.* ALL that messuage or tenement, commonly called or known by the name and sign of the , situate, lying and being in , in the parish of , in the county of , and late in the possession or occupation of one *H. I.* TO HAVE AND TO HOLD the said messuage or tenement,

tenement, and premises, with the appurtenances, from the date of these presents, for, during, and unto the full end and term of *five years* from thence next ensuing, and fully to be complete and ended. PROVIDED ALWAYS and on this condition nevertheless, that if the said *D. E.* his executors or administrators, shall, at any time after the day of this present month of , tender the said *F. G.* his executors or administrators, *one shilling*, then this present indenture and every thing herein contained shall be void, and of none effect, any thing herein contained to the contrary in any wise notwithstanding. *In witness* whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Sealed and delivered (being first
duly stamped) in the presence of }

96. THIS INDENTURE, made the day of ,
in the 15th year of the reign of our sovereign lord *George*
the Third, by the grace of God, of *Great Britain, France,*
and *Ireland*, king, defender of the faith, &c. and in the
year of our Lord , BETWEEN *S. P.* of, &c. victual-
ler, of the one part, and *J. B.* of, &c. brewer, of the
other part, WITNESSETH, that the said *S. P.* for and in
consideration of the sum of pounds, of lawful mo-
ney of *Great Britain*, to him in hand well and truly paid
by the said *J. B.* the receipt whereof is hereby acknow-
ledged, *hath* given, granted, bargained, and sold, and by
these presents *doth* give, grant, bargain and sell, unto the
said *J. B.* ALL and every the goods (a), chattels, household
goods and furniture, bedding, vessels, liquors, and other
things whatsoever of him the said *S. P.* and which are spe-
cified and contained in the schedule hereunder written;
and all the full and whole right, property, interest, claim,

Form of an ab-
solute bill of
sale.

The like
stamps by the
same acts, for
the same rea-
sons.

(a) It is necessary to remark upon this part of the bill of sale, that a grant, assignment, bill of sale, or other conveyance of *all* the property of a trader, or of such a portion of his property, as thereby disables him from carrying on his trade and

tends in any event to delay or defeat a creditor from recovering a legal debt is in itself, an act of bankruptcy; for, it is considered as a fraudulent gift within the meaning of the 13 Eliz. c. 7. and of course void. See Cook's Bank. Law, 91.

Precedents of Bills of Sale.

and demand whatsoever of him the said *S. P.* either in law or equity, of, in, and to the same, and every part and parcel thereof, TO HAVE AND TO HOLD the same, and every part and parcel thereof to him the said *J. B.* his executors, administrators and assigns, *To the sole and only proper use,* advantage, benefit, and behoof of him the said *J. B.* his executors, administrators and assigns, absolutely for ever, without any account whatsoever to be made, given or rendered for the same, or any part thereof, to him the said *S. P.* his executors, administrators or assigns, or any of them; *And* the said *S. P.* all and singular the said goods, chattels, and premises above bargained and sold, or mentioned or intended so to be, and every part and parcel thereof, to him the said *J. B.* his executors, administrators and assigns, against him the said *S. P.* his executors and administrators, and against all other person and persons whatsoever, shall and will warrant, and for ever defend by these presents; *And* that these presents may be the more effectual, and the said *J. B.* his executors, administrators and assigns, may the better have and enjoy the benefit and advantage of the bargain and sale hereby made, he the said *S. P.* hath, in the presence of the witnesses who have subscribed their names to the due execution of these presents, put the said *J. B.* in full possession of the said several goods, chattels and things above granted, bargained and sold, and mentioned and contained in the schedule hereunder written, and every part or parcel thereof, by delivering unto the said *J. B.* a *half-pint pewter pot*, parcel of the goods and chattels, in the name of the possession thereof, and of all other the goods, chattels and things whatsoever in the said underwritten schedule contained, and herein before granted, bargained and sold, or mentioned or intended so to be, to him the said *J. B.* IN WITNESS whereof the said *S. P.* hath hereunto set his hand and seal the day and year first above-written.

*Scaled and delivered [being first duly }
stamped] in the presence of }
The schedule (b) referred to by the deed above*

Note: If it is only a conditional bill of sale by way of mortgage of the goods and chattels, till such time the money lent is re-

(b) The schedule must be written upon a two shilling and six-penny stamp, by the same act. See Ray-

ner's Observations on the Stamp Duty statutes, octavo edition 1786, p. 83.

paid

paid with interest, the following proviso of redemption must be inserted therein immediately after the bargainor's warranty, to defend the bargainee in possession of the goods sold or mortgaged, beginning after the words "for ever defend by these presents."

PROVIDED ALWAYS, that it is hereby agreed between the said parties to these presents, that if *S. P.* his executors, administrators or assigns, do and shall, well and truly, pay or cause to be paid unto the said *J. B.* his executors, administrators or assigns, the full sum of pounds, with lawful interest for the same, at and after the rate of pounds *per cent.* on the day of next ensuing the day of the date of these presents, for the redemption of the said hereby bargained and sold premises, then these presents, and every clause, article, condition and thing herein contained shall cease, and be utterly void, or else remain in full force and effect. IN WITNESS, &c.

Sealed, &c.

97. BE IT KNOWN unto all men by these presents, that *whereas* WE, whose hands and seals are hereunto put, do severally hold several messuages or dwelling-houses, with their appurtenances, at our respective names hereunto mentioned and particularly described, situate in , in the county of , or liberty of the same, heretofore in the possession of *G. H.* esq; lately recovered from him, by an ejectment brought in the court of , on the demise of *R. S.* esq; and a writ of *habere facias possessionem* has been executed therein, by the sheriff of the said county, and possession thereof delivered by him to the use of the said *G. H.* Now WE the said persons under-named *do* hereby severally attorn tenants, of and for the said premises in our respective holding unto the said *G. H.* at and under the several yearly rents, and payable at the days and times at our respective names under-mentioned; he the said *G. H.* paying or allowing thereout all leys, taxes and repairs. AND we have this day severally paid to *H. H.* for the use of the said *G. H.* *one shilling* for and in the name of such attornment. *In witness* whereof we have hereunto set our

A tenant's attornment to his landlord.

Note; to this attornment must be added a rental, with the particular times when each tenant is to attorn.

This attornment must *not* be on a six shilling stamp, but on a stamp amounting to six shillings. See *ante*,

fol. 31. and *Rayner's Observations* on Stamp Duty Statutes. p. 83.

hands

hands and seals this day of , in the year of
our Lord .

Sealed and delivered.

An attornment
(a) in another
form.

(a) NOTE: At-
tornments must
be indorsed on
the deed to
which they re-
late, or else de-
clared in a se-
parate deed.

98. MEMORANDUM, That the persons whose names are
hereunder written DID the day of 1791, at-
torn and become tenants unto the above named J. H. ac-
cording to the purpose of the lease within mentioned, hav-
ing notice of the said grant; and for proof thereof every
one of them DID give unto the said I. H. in the name
of attornment.

Tenants names,

Witness hereto.

The memorial
of a lease for
years. (a)

99. A MEMORIAL to be registered pursuant to an Act of
Parliament made for that purpose. OF AN INDENTURE of
lease, bearing date the day of , in the year
of our Lord one thousand seven hundred and ninety-one,
and made between A. B. of, &c. of the one part, and C.
D. of, &c. of the other part. Whereby the said A. B.
for the considerations therein-mentioned, did demise to the
said C. D. ALL, &c. (*here insert the premises demised as they
are particularly described in the indenture of lease.*) TO HOLD
for the term of years to commence from ,
at the yearly rent of , of lawful money of Great
Britain, which said indenture of lease is witnessed by J. J.
of, &c. and T. T. of, &c. and is hereby required to be re-
gistered pursuant to the said act by me the said C. D. the
lessee in the said indenture of lease. AS WITNESS, &c.

Signed, &c.

C. D.

(a) For the several forms and ce-
remonies required by law for the re-
gistering deeds in the counties of
York and Middlesex which are the
only two register counties in England
we must refer to the statutes of 2 &
3 Ann c. 4. 6 Ann c. 35. 7 Ann
c. 20, and 8 Geo. 2. c. 6. remark-
ing that, although it is positively said
by stat. 7 Ann. c. 20. that a register-
ed deed shall take place of an unre-
gistered deed, yet equity will not set
an unregistered deed aside in favour of
a party who knew it was unregistered
at the time, because he had that no-
tice which the act of parliament in-
tended he should have. Cowp. Rep.

712. And it is also necessary to re-
mark that by the 17 Geo. 3. c. 26.
called THE ANNUITY ACT; a
Memorial of all deeds, bonds, &c.
for granting life annuities shall,
within twenty days after the execu-
tion thereof be enrolled in the Court
of Chancery, which Memorial shall
contain the date, names of the par-
ties, witnesses, the whole consideration
in words at length, and if any part of
the consideration shall be returned
or any notes shall not be paid when
due, the Court may order the deed
to be cancelled. See 1 Term Rep.
378. 732. 2 Term Rep. 366. 603.
3 Term Rep. 298. 554.

100. A MEMORIAL to be registered pursuant, &c. OF Memorial of a mortgage for years.
 AN INDENTURE of mortgage dated the day of ,
 1791, and made between A. B. of, &c. of the one part,
 and C. D. of, &c. of the other part. Whereby the said
 A. B. for and in consideration of pounds, demised
 unto the said C. D. All, &c. (here insert the premises as particularly described in the indenture of mortgage) TO HOLD unto
 the said C. D. for the term of years, SUBJECT NEVERTHELESS to a proviso that the same shall be void on payment of the sum of pounds, of lawful money of
 Great Britain; together with lawful interest for the same, on the day of , 1791, which said indenture
 of mortgage is witnessed by J. J. of, &c. T. T. of, &c. and is hereby required to be registered pursuant to the
 said act of parliament, by me the said A. B. the grantor in the said indenture of mortgage. AS WITNESS, &c.

Signed, &c.

A. B.

101. Bill of Costs for registering a Judgment in Middlesex.

	Monies out of Pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Drawing and engrossing memorial of the judgment to register and parchment	0 0 2	0 1 10	0 3 6
Attending register to get his certificate	0 0 0	0 1 8	0 3 4
Paid for certificate	0 2 6	0 2 6	0 2 6
Drawing and engrossing affidavit of register's signature, duty and oath	0 2 7	0 4 1	0 5 7
Attending to swear same, and to get memorial registered	0 0 0	0 3 4	0 6 8
Paid registering	0 5 0	0 5 0	0 5 0
	£. 0 10 3	0 18 5	1 6 7

CHAPTER THE FIFTH.

The Law of Estovers.

1 Bl. Com.

441.

2 Bl. Com. 35.

Co. Lit. 41.

Dyer 19.

4 Co. 86.

11 Co. 46.

1. **E**STOVERS are of three kinds in law, and are incident to the estate of every tenant, whether for life, or years. *Estover* or *boot* signifies a liberty of taking necessary wood for the use or furniture of the house or farm; and any of these a tenant may take without assignment of the landlord, unless he be restrained by special covenant in his lease, which is usual among landlords, especially if the farm be any thing considerable, when they commonly limit the tenant how much *house-boot*, *plough-boot*, or *hedge-boot*, he may take without assignment, and how much by assignment. *House-boot* is of two kinds, the one to repair the houses, the other to burn, which is called *fire-boot*. There is an *estover* called *plough-boot*, viz. stuff to mend the tenant's ploughs, carts, harrows, wains, and for making rakes and forks, for getting in his hay and corn. The *estover* called *hedge-boot*, or *hay-boot*, is timber and wood for making gates and stiles, and boughs and bushes for mending and repairing hedges and fences.

2. If a tenant for life or years cut down trees, or pull down houses, or suffer them to fall down, the lessor shall have the trees and timber of the said houses; for the lessee had them only as things annexed to the land, and this severance will not give him a greater estate in them, but his interest is then determined.

3. The landlord shall likewise have *windfalls*; that is timber-trees blown down by wind and tempest, because they are parcel of his inheritance, so that the tenant for life or years cannot have them, unless it be to build withal, where houses are in decay: but if they are *dotards* or *pollards* without timber, which bear neither leaves nor fruit in summer, the tenant shall have such when they are blown down.

4. *Estovers* granted to be burnt in a house, go to the person that has the house by whatsoever title; for one is inseparably incident to the other.

5. Lessees for life or years, tenants in dower or by curtesy, or tenants *in-tail after possibility*, &c. have only a special interest or property in the trees, as things annexed to the lands, so long as they are annexed thereto; but if they or any

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any other sever the trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined.

6. If a stranger cut down a tree growing on the land of a lessee for *years*, and carry it or the bark thereof away, the lessor at his election may have either an action of *trover* against the stranger, or an action of *waste* against the lessee; for the property of the timber is always in the lessor.

7. If a person have *estovers* uncertain in *ten acres* of wood, and *five* of them descend to him, he shall have the whole out of the residue.

8. If a man grant to another *estovers* uncertain in such a wood, and afterward the grantor make such waste in the wood, as that there is not sufficient store left, out of which the grantee may take his *estovers*, he may have a writ of *quo minus* against the grantor, which is in the nature of a *prohibition*.

9. A right to *glean* in the harvest field cannot be claimed as part of the general common law of the land.

Duberley v.
Page. 2 Term
Rep. 391.
3 Term Rep.
445.

10. The lord of a manor has no right, under the statute of *Merton*, to enclose and approve the wastes of a manor, where the tenants of a manor have a right to *dig gravel* on the wastes, or to take *estovers* there; but any person who is seised in fee of part of a waste within a manor may approve, leaving a sufficiency of common, although not lord of the manor.

CHAPTER THE SIXTH.

The Law of Rents.

1. **R**ENT is a species of incorporeal hereditament, and signifies a compensation or return, in the nature of an acknowledgment given for the possession of some corporeal inheritance. It is defined to be a *certain profit* reserved to the grantor, either in money, services, manual operations, or some other thing, not parcel of the premises demised, *issuing yearly*, (though there is no occasion for it to issue every successive year) *out of lands and tenements corporeal*, that is from some inheritance whereunto the owner or grantee of the rent may have recourse to *distrain*; and therefore a rent cannot be reserved out of an advowson, a common, an office, a franchise, or the like. At the common

Co. Lit. 144.
2 Bl. Com.
141.
4 Bac. Abr.
335.
8 Co. 71.
Plowd. 17.
5 Com. Dig.
421.
Co. Lit. 47.
5 Com. Dig.
422.

law

law there were three kinds of rents, viz. rent service, a rent charge, and rent seck. The first was where the tenant held his land by fealty or other services, and a certain rent. The second is where a man seised of land grants the whole of his estate in fee, without reserving any future interest in it, at a yearly rent to be issuing out of the same, with a clause of *distress*; for by this kind of grant the land becomes *charged* with the *distress* for the *rent*, which it would not otherwise have been. The third is in effect nothing more than a rent reserved by deed, without any clause of distress. There is also *rack rent*, which is only a rent to the *full value* of the tenement, or near it; and *fee-farm rent*, which is a rent charge, or perpetual rent reserved on a grant in fee of at least one-fourth of the value of the lands, and is indeed only letting lands to farm in *fee-simple*, instead of the usual method, for *life* or *years*; but as to the mode of recovering them, all material distinction is, in effect, abolished by the statute 4 Geo. 2. c. 28. as we shall shew in the chapter concerning "*distress for rent*," and examine at present,

See 2 Bl. Com.
43. Madox
Firmam
Burg. 3. Dougl.
Rep. 602; and
Mr. Hargrave's
Co. Lit. 144.
Note (1)

1. *To and by whom rent is payable.*
2. *At what place.*
3. *Of the TIME of payment.*
4. *Of the DEMAND necessary to be made.*
5. *The tender and acceptance of rent.*
6. *Of the consequences of non payment.*
7. *Of notice to quit.*
8. *Of double rent.*

1. *To and by whom Rent is payable.*

Co. Lit. 47.
143.
Hob. 130.

2. RENT, properly so called, must be reserved or made payable, upon every feoffment, gift, or lease, to the feoffor, donor, or lessor, and their heirs only, and cannot in any manner be reserved or made payable to a stranger; for rent being by way of retribution for the land demised, can only be payable to him from whom the land passes: And therefore if a tenant in tail demise the intailed land for years (a), rendering rent to him and his heirs generally, it will, on the death of the lessor, become payable, by indentment of law, to the heir in tail: So also, if a tenant for life, who is impowered to make leases (b), demises the estate, with a reservation of rent to him, his heirs and assigns,

(a) Vide ante
p. 2. f. iv.

(b) Ante p. 6.
f. ix.

signs, yet on his death it becomes payable to him in remainder (c). Thus also, if a tenant in fee let, rendering rent generally; or a lessee for years make an under-lease of part of his term, reserving rent to him and his heirs, it shall go, on their deaths respectively, in the first case to the heir at law, and in the second to the executors or administrators of the lessor (d). But a man may reserve a rent to himself for life, and a different rent to his heir (e).

(c) 1 Vent.
161.
8 Co. 70.
(d) 1 Vent. 162.
Co. Lit. 47.
Dyer 45.
5 Com. Dig.
423.
(e) Co. Lit. 213.
214.

3. If a lessor grant a term of years at a reserved rent, and afterwards assign such rent, and the lessee agree to become tenant to the assignee, the rent becomes payable to such assignee, and he may *disfrain*, or bring an action of *debt* to recover the arrears.

4. If a tenant in fee-simple demise lands for a certain number of years at a reserved rent, and die within the term, the rent in arrear at the time of his death becomes payable to the *personal representative* of the lessor, and does not go to his heirs, because rent once due becomes a personalty; but if the lessor die before the day, the heir shall have the rent.

Cro. Eliz. 575.
10 Co. 128.
5 Com. Dig.
425.

5. In an ecclesiastical distribution of a testator's or intestate's estate, the executor or administrator must pay *rent* before *bonds*, because *rent* favours of the realty, and arises from the profits of the land demised.

6. On a bond for performance of the covenants of a lease, if the lessee fail in payment of the rent, such bond is forfeited; for the payment of the rent is part of the condition of the bond: For example, if *A.* let a parcel of land to *B.* on lease, with a reservation of 5 *l.* rent to himself, payable at a future day, and *B.* bind himself in a bond of 200 *l.* to pay such reserved rent, and before any day of payment, *A.* ousts *B.* out of any part of the said demised premises, and occupies the remainder for the whole term, and refuses to pay any rent, yet the bond is not forfeited: for by *ousting* the tenant out of part of the demised premises, the whole rent becomes in suspense, as it arose from the lessor's own act; but if one day of payment be past before the *ousting*, the tenant must either pay the rent, or forfeit his bond; or if the tenant be put out of the land by a stranger, who keeps possession thereof until a day of payment of rent be past, he must pay such rent on the day whereon it was agreed to be paid, or he incurs the forfeiture aforesaid, because his remedy at law is against the stranger.

7. A

7. A man granting a lease on condition that the rent shall be paid at a given time, if, before that time come, the lessor give the lessee a general release of all actions and demands, this release will not acquit the lessee of the rent, because it was neither due, nor paid at the time the release was given : And a general release of all *demands* does not release rent due on a lease.

8. A person having a lease of lands for any given term, &c. and demises some part of such term, at a reserved rent, in that case he may distrain for the reserved rent, or bring an action of *debt* for the same, because the remainder vests in him.

9. Where any person *holds* lands for a term in right of his wife, and demises the same to another for a less term, at a reserved rent, and dies, the executors of the husband are entitled to the rent during that term, and at the expiration thereof the remainder of the original term reverts to the wife, who would have been entitled to nothing if her husband had granted the whole term.

10. A rent granted by two or more *tenants in common*, is *several* ; but if they make a lease with a reserved rent, they are entitled to no more than the amount of such reserved rent between them all.

11. If two or more *co-parceners* make a lease with a reserved rent, they are entitled to this rent in *common*, because the reversion remains in them ; but if they afterwards grant the reversion exclusive of the rent, they by this act, make themselves *joint-tenants* to the rent.

12. Where lands have been leased for a term on a reserved rent, and a stranger recovers part of the lands, the tenant must pay to each party in proportion to the quantity that he holds from them respectively.

13. The executors of a lessee who has assigned over his term, are not answerable for rent due after his decease ; for if a tenant for years assign his lease, the landlord may charge which of them he will.

14. Where a lessor grants away the reversion after the assignment of the lessee, the grantee cannot maintain an action of *debt* against the lessee for the rent.

15. If a lessor or landlord demises premises on a lease to a lessee or tenant to pay the rent on the *four feast days*, or within *fifteen days* after either of them, and the lessor or landlord dies after either of the said feast days, the heir of the lessor shall have the rent, because the *feast day* is but *voluntary*,

(c) Vide post
c. 8.

voluntary, and the legal day of payment is at the end of the fifteen days.

16. On a lease for years by *parol* or *deed-poll* from joint-tenants, reserving rent to one of them, such rent shall *enure* to both; but if it be by *deed indented*, it will *enure* to such person by way of conclusion.

17. A man holds lands in right of his wife, and they lease the same at a reserved rent; if the husband die, and the wife, before the rent becomes due, marries again, such second husband is entitled to the rent.

18. A person demising land for *life* or *years* at an annual rent, afterwards enters on the said premises, and takes the profits; by this act the whole rent is discharged, and shall continue suspended while he holds the same.

19. If a person having a lease for years at a reserved rent, assign over the same, and give his assignee a *release of all demands*, it will be an extinguishment of such reserved rent; but a reserved rent incident to a reversion is not barred by such release.

20. If a parson let his glebe-lands to a lay-man, the tenant shall pay the parson tithe of that land, besides the rent; for the tithe is his property of common right.

21. If a man make a lease for years, reserving rent *generally*, without saying to whom, the law will deem such rent to be paid to the person who has the reversion.

22. Tenants kept out of their premises, by rebellion, civil discord, or other inevitable accidents, must, notwithstanding, pay their rent; nor can they be relieved in equity. Vide post pl. 26.

23. If a man let lands on a lease, reserving a rent, the lessee is liable in an action of *debt* for the rent, although he never entered on the demised premises; for the rent accrues from the lease, which is the *contract*, and not from the *occupation*; also he is liable to an action of *covenant* before he takes actual possession. Dougl. 461.

24. If a lessee grant an under-lease of a part of his term, the original lessor cannot sue the *under-lessee* in an action of covenant for rent due to him from the lessee to whom he demised the premises; but if the under-lease had been for the whole term demised, it would then be considered as an *assignment*, and not as an *under-lease*, and the action would be maintainable. Holford v. Hatch. Easter Term 19 Geo. 3. Dougl. 185.

25. If a landlord give his tenant notice to quit, or pay such a rent, and the tenant holds over, the landlord may
F bring Loft 153.
1 Term Rep. 53.

bring an action for use and occupation, and shall recover the rent specified in the notice.

1 Term Rep.
310.

26. Lessee covenants to pay rent and to repair, with express exception of casualties by fire, he is liable upon the covenant for rent, though the premises are burnt down, and not rebuilt by the lessor after notice.

27. By the 8 Ann. c. 14. "No goods upon any tenement leased shall be taken by any execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to THE LANDLORD of the premises, or his *bailiff*, all money due for rent on the premises, provided the arrears do not amount to more than *one year's rent*: And in case the arrears shall exceed one year's rent, then the party, paying to the landlord or his bailiff one year's rent, may proceed to execute his judgment: And the sheriff is required to levy and pay to the plaintiff as well the money paid for rent as the execution money." And it hath been deter-

(a) 2 Will.
140.

(b) Dougl. 665.

(c) Stra. 787.

(d) B. R. H.

255.

1 Peere Wms.

392.

Salk. 65.

4 Bac. Abr.

352.

mined that an execution on a judgment of nonsuit is an execution within this statute (a); and an action on the case will lie against the sheriff for taking the goods without leaving the year's rent (b). But the ground landlord of a house is not entitled to a year's rent on an execution against a under-lessee (c), and the landlord must demand the arrears before the goods are removed, or it will be too late (d).

28. By 11 Geo. 2. c. 19. § 15. "Where any tenant for life shall die on or before the day on which any rent was reserved upon any demise which determined on the death of such tenant for life, the executors or administrators of such tenant for life may, in an action on the case, recover of the *under-tenants*, if such tenant for life die on the day on which the same was made payable, the whole; or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter, or other time in which the said rent was growing due, making all just allowances."

II. *At what Place Rent is to be paid.*

Co. Lit. 208.

2 Bl. Com.

43.

4 Co. 73.

Cro. Eliz.

462.

Dyer 87.

29. RENT is regularly due and payable *upon the land* from whence it issues, if no particular place is mentioned in the reservation; but in the case of the king the payment must be either to his officers at the *exchequer*, or to his receivers in the country.

30. If

30. If a lessee, or tenant for years, be bound in an obligation for the payment of his rent precisely at a day, it is his duty to seek out the lessor, or landlord, and tender him the rent; but if the bond be to perform the covenants in the lease, he may then tender his rent on the land, unless some other particular place be mentioned for the payment thereof; and the demand in such case must be made at the particular place of the land, where by the terms of the lease the rent is appointed to be paid.

III. At what Time Rent becomes due.

31. RENT, in strictness, is demandable and payable before the time of *sun-set* of the day whereon it is reserved, though some have thought it not absolutely due till *midnight*: For it is said, that if the lessor die before midnight, his *heirs*, and not his *executors*, shall have the rent. On a lease for a certain number of years, rendering such a rent to be paid by equal portions during the *term*, it shall be paid yearly, though that word be omitted: So if made payable at the usual feasts, without saying which, it shall be construed at *Michaelmas* and *Lady-day*; or to be paid *quarterly*, it shall be paid every quarter, though the quarter do not end at the usual feasts; for where there are special days limited for the payment of rent in the lease, the rent must be computed according to the day of payment thereof, and not according to *the holding* thereof; but where the reservation is general, as *half-yearly*, or *quarterly*, and no special days mentioned, then the half year or quarter must be computed according to *the holding*.

32. Every quarter's rent is considered in law as a several debt from the lessee to the lessor, for which the lessor may distrain, or bring distinct actions of debt for each quarter's rent due and in arrear.

33. On a demise, rendering rent at *Michaelmas*, or so many days after, the lessee is not bound to pay it until the last day, which is the legal time of payment; but he may pay or tender at any time on *Michaelmas-day*, or before the day's elapse, and the lessor ought to accept it. On a lease with a clause "that if the rent be behind, or unpaid for the space of *fifteen days* (more or less) after any of the *feast days*, then such lease to be void;" in this case, if the time limited be *fifteen days*, the tenant shall have *thirty days* after any of the said *feasts* to save his lease and pay his rent;

2 Bl. Com. 43.
Ander. 253.
1 Saund. 287.
1 Ch. Prec.
555.
2 Roll. Abr.
449.
1 Sid. 116.

10 Co. 127.
Vide ante f. 14.
Cro. Jac. 227.
Yelv. 167.

rent; but if it be "that if the rent be behind, or unpaid" for the space of fifteen days *next after* either of the said "feast days or days of payment," in such case the lessee or tenant has but *fifteen days* only allowed him.

34. In payment of rent at a certain day, the lessee or tenant has all that day, and *until night*, to pay the same; but if the rent is a large sum, he should have it in readiness *before sun-set*, that the lessor or landlord may have *day-light* enough to count it by; for he is not obliged to take it by *candle-light*.

35. The tenant may tender his rent on any part of the premises to his landlord on the last day of payment; which tender will save him the condition of his lease, though it is not the most *notorious* place.

IV. Of the Demand of Rent.

Goodright v.
Caten Mich.
21 Geo. 3.
Dougl. 485.
Co. Lit. 201.
Cro. Jac. 145.
5 Com. Dig.
430.

36. An actual demand of rent is indispensably necessary, before a landlord can *enter* the premises for the *non-payment* of it, unless the necessity of such demand is waived by the express agreement of the tenant, and unless by statute 4 Geo. 2. c. 28. § 2. where six months rent is in arrear, and there is not a sufficient distress on the premises: For in all cases of a *subject* where an estate is upon condition to be void for non-payment of rent, the condition will not be broken if the rent be not demanded.

Hob. 207.
Hutton 13.
Moor 883.
2 Roll. Abr.
426.
4 Bac. Abr.
353.

37. But where the remedy for the recovery of the rent is by *distress*, and not by *re-entry for non-payment*, there needs no demand previous to the distress, although the tenant has agreed that if the rent be behind, being *lawfully demanded*, that the lessor may distrain; for the lessor notwithstanding such clause may *distrain* when the rent becomes due.

38. A man making a lease for a certain number of years, at a rent payable to him and his heirs, on condition that, if the rent be behind, or unpaid for the space of *forty days* after the day appointed for payment thereof, that then the lessor or landlord, and his heirs, are to re-enter; and after *demand* made of such rent by the lessor or landlord, *he dies*, and his heir, in consequence of the condition, re-enters such re-entry is lawful: But had the lessor or landlord died *after the feast day*, and before the *forty days*, and had not *demand*ed the rent, and his heirs had demanded the same on the *fortieth day*, and, on non-payment, had entered, in such case the re-entry would not have been lawful.

39. If

39. If a lessor or landlord wish to take advantage of a re-entry for non-payment of rent, the person who demands the same must be careful not to demand a penny more or less than what is due: He must also shew the certainty of the rent, and when due, or such demand is not good; nor will a re-entry be given, unless the demand be precisely and distinctly followed.

V. Tender and Acceptance of Rent.

40. A TENDER is an offer to pay a debt, or to perform a duty; and if refused, may be pleaded in bar of any action for not payment or non-performance; but it is not enough for the person who intends to make a tender, to say "I am ready to pay the debt," or "to perform the duty;" for he must make an actual offer to pay the one or perform the other. A tender should be in the *current coin* of the kingdom; although a tender in *bank notes* is good, if not specially objected to on that account at the time (a): It should also be of the whole rent due, without any deduction of taxes or assessments, or any other charge whatsoever: But by the land-tax act (b) the tenants are required to pay such sums of money as shall be rated on the premises, and to deduct so much of the same out of their rents as the landlord ought to have paid; who is directed to allow the same upon the receipt of the rent; so that the land-tax receipts may now be *tendered* in part payment. The landlord of a term, if he accept the rent so tendered, should see that the money is not bad, or deficient in weight, for if he *accept* it, he thereby bars himself from any remedy by *re-entry*.

41. ACCEPTANCE is a taking in good part, and as it were an agreeing to some act done before, which might have been undone and avoided if such acceptance had not been made: Thus although a lease may be made *voidable* by the laches or default of the lessee, in not paying his rent according to the covenants therein contained, yet it can only be rendered void by the act of the lessor, that is by *his entry*; but if the lessor after such non-payment at the day, and before re-entry, *accept* the rent, that which was before voidable becomes by such acceptance a good lease. So also if a lessor once accept rent from the assignee of the term, knowing of the assignment, he cannot afterward bring an action of *debt* against the lessee for rent due after the assignment; the lessor, however, or his assignee, may bring an

5 Bac. Abr. 1.

1 Leon. 71.

2 Lev. 209.

3 Lev. 104.

12 Mod. 353.

(a) So determined in Hilary Term 30 Geo. 3. in the Case of Wright v. Read.

(b) 30 Geo. 2. c. 3. s. 15.

Termes de la Ley. p. 6.

Co. Lit. 217.

Cro. Eliz. 553.

572.

1 Roll. Abr.

475.

Cro. Jac. 398.

action of *covenant* against the first lessee on his covenant for payment of rent.

42. A lease, with a proviso that in case of non-payment of the rent the lessor or landlord may re-enter, in this case, if the lessor or landlord distrain, he loses his right of re-entry; but he may accept the rent of the lessee or tenant, and yet re-enter: But if he receive the succeeding quarter's rent, he cannot then re-enter; for this act of the lessor or landlord purges the lessee or tenant of his breach, and re-establishes his lease.

43. On a lease conditioned that the lessee or tenant shall do no waste, if he commit waste, and the lessor or landlord afterwards accept the rent, he waives his right of re-entry. If it had been conditioned that if he committed waste his estate should cease, in that case, if the lessee or tenant commit waste, no acceptance of the rent afterwards will make the lease good.

Doe on the demise of Cheney
v. Batten.
Hilary 15 Geo.
3.
Cowp. 243.

44. The mere acceptance of rent by a landlord, for occupation subsequent to time when notice to quit expired, is not of itself a waiver on the part of a landlord of such notice, but it is to be left to the jury, *quo animo*, the rent was received.

By Aston and
Wilkes Justices
ibid. p. 247.

45. Acceptance of single rent is a waiver of the double rent given by the statute 4 Geo. 2. c. 28.; and acceptance of rent after the forfeiture of the lease, by the same statute, seems to have been held a waiver of such forfeiture, for it is a penalty.

Goodright on
the demise of
Walter v.
David. Easter
18 Geo. 3.
Cowp. 803.

46. If a lessee covenant not to underlet, without the consent of the lessor, under hand and seal, with power of re-entry, in a case of a breach; acceptance by the lessor of the rent due after the condition broken, with full notice, is a waiver of the forfeiture.

Roe v. Harri-
son Easter Term
28 Geo. 3.
2 Term Rep.
425.

47. The lessor's receiving rent after the lease has become forfeited, is no waiver, unless the forfeiture were known to him at the time.

VI. Of Non-payment of Rent.

48. On the non-payment of rent at the day it is due, the law hath furnished LANDLORDS with several methods of recovering it, according to the circumstances of each case. The most usual methods are, 1st. By *distrain*, of which we shall treat in the ensuing chapter. 2d. By action of debt, for breach of the express contract.

49. DEBT lies, by the common law, for arrears of rent reserved on a lease for years or at will: So also it lies after entry for a forfeiture on condition broken, to recover the rent due before: So also if the lease be with a *nomine pæne*, it lies to recover the *penalty*. By 32 Hen. 8. c. 37. debt lies by an executor or administrator of any person seised of a rent-service, rent-charge, rent-seck, or fee-farm rent, in fee, in tail, or for life of another, against him that ought to pay the same, his executor or administrator. By 8 Ann. c. 14. any person having any rent due on any lease for lives, may bring debt for the same, although the lease for life be continuing, in the same manner as if due on a lease for years, which they could not do at common law: And by 8 Ann. c. 14. and 5 Geo. 3. c. 17. action of debt may now be brought at any time to recover even a freehold rent on a lease for life, &c. These actions lie, though the tenant never entered on the premises; but they cannot be brought in the court of conscience in *London*, nor in the court of requests for the *Tower hamlets*: Also by 11 Geo. 2. c. 19. where the demise is by *parcel*, or written agreement, and not by *deed*, the landlord may recover in an action *on the case* a reasonable satisfaction for the use and occupation of the premises so held and enjoyed (a).

50. Bankruptcy is a plea to an action of *debt* on the *redendum* of a lease; But *quare*, whether it is to an action of covenant for rent.

VII. Of Notice to quit.

51. ALL DEMISES, where *no certain term* is mentioned, are held to be tenancies from *year to year*, which neither party can determine without reasonable notice to the other. This notice in most cases is *six months* preceding that part of the year when the tenancy commenced, and therefore it hath been holden that *half a year's notice* to quit possession must be given to such tenant before the landlord can maintain an *ejectment*; and it must be *half a year's notice*, for *six months* notice is not sufficient (b).

52. But if the tenant has attorned to some other person, or done some act disclaiming to hold as tenant, or where the possession of the tenant is *adverse*, in these cases *no notice* is necessary: And the same law will apply to the executor of such tenant.

Co. Lit. 47.
1 Sid. 401.
4 Co. 49.

Co. Lit. 162.
1 Roll. Abr.
595.

2 Com. Dig.
636.

3 Bl. Com.
232.
Doug. 245.

(a) See the act
post p. 8. f. 12.

1 Term Rep.
36. 91.

Mr. Serjeant
Runnington's
Treatise on
ejectments.

P. 23.
2 Bl. Com.
147.

Throgmorton
v. Whelpdale
B. R. Hilary
2 Geo. 3.

(b) Per Bul-
ler Justice.

1 Term Rep. 163.

Foster v.
William's.
Cowp. 622.
3 Will. 25.

Bury Affises.
1775.

1 Term Rep.
362.

Whatley v.
Hawkin's.
Mich. 14 Geo.
3. and Heech
v. Hale.
Doug. 21 to
23.

Birch v.
Wright.
Mich. Term
27 Geo. 3.
1 Term Rep.
380.

Determined in
Easter Term
1779, B. R.—
See Doe v.
Jackson.
Doug. 175.

Messenger v.
Armstrong in
B. R. Mich.
Term 26 Geo.
3. 1 Term
Rep. 54.

(a) Confirmed
by Ashhurst
Justice.
1 Term Rep.
162.

Gulliver on the
demise of Tai-
lier v. Burr.
Easter 6 Geo. 3.
1 Bl. Rep. 596.

53. But after the expiration of A LEASE for a *certain* term, the tenant continuing in possession is deemed a trespasser, and therefore an ejectment may be brought without any notice to quit; for the lease ending on a *precise day*, or at a particular period, both parties are equally apprized of the determination of the term; and it is of course at an end, unless the parties come to a fresh agreement.

54. So a mortgagee need not give any notice to quit, if he mean only to get into the receipt of the rents and profits, even though the mortgage be subsequent to the lease; but in such case he will not be suffered to turn the tenant out of possession.

55. But where a tenancy from year to year commences previous to the premises being mortgaged, or to a grant of the reversion, the mortgagee or grantee must give the tenant *six months* notice to quit before the end of the year.

56. A notice in the alternative is sufficiently valid to found an ejectment upon, *viz.* to quit at the end of six months OR pay double rent—so also, a second notice to quit at the expiration of the lease delivered to the tenant after the expiration of a first notice to quit on a subsequent day, OR pay double rent, has been held to be no waiver of the first notice or of the double rent which has accrued under it.

57. At a meeting of eleven of the judges (among whom were Lord MANSFIELD and Lord Chief Justice DE GREY, a conference was had on the motion of Mr. Justice GOULD what notice was necessary to be given to a lessee *at will* to quit possession before a lessor at will could have title to bring an ejectment, and recover possession; and it was their unanimous opinion, that in all cases of *leases at will* of farms of *land* to hold from year to year, and so for as long time as both parties shall please, that before the landlord can have title to bring ejectment against the tenant at will, he must give the tenant *half-a-year's notice* to quit possession of the farm: And they held the like law as to *houses* (a) let at will, unless there be some usage or custom, in the place or district where the house is situate to give a *shorter* or other kind of notice to quit.

58. On a demise from year to year commencing on the 10th of *October*, the tenant died on the 27th of *August* following. The landlord gave notice on the 9th of *September* to the executor to quit the premises at the *end of the term*. The court

court held clearly that, in a common case it would not be sufficient notice; and Lord Mansfield strongly inclined that as regular notice had not been given the executor might, in this case hold the farm *another year*.

59. Where one in remainder, after the expiration of an estate for life gave notice to the tenant to quit on a certain day, and afterwards accepted half a year's rent, such acceptance, being only evidence of a holding from *year to year*, is rebutted by the *previous notice to quit*, and therefore *such notice* remains good, although it was not *half a year's notice*, ending on the day the tenancy commenced.

Murgatroyd's
Case before Mr.
Justice Black-
stone, at York
Assizes, 1774.

60. A tenant from year to year may prove, in an action of ejectment, that the time the term commenced was different from the time to quit mentioned in the notice; but a notice to quit at *Lady-day* shall be admitted as *prima facie* evidence of a holding from *Lady-day to Lady-day (a)*, until the contrary be shewn; and so from any other of the *feast days*, or other commencement of a demise.

Duncombe's
Case before
Lord Mansfield
at Guildhall.

(a) Vide ante
and 2 Bl. Rep.
1224.

Penruddock v.
Harris, before

Mr. Baron Eyre at Dorchester Assizes, 1784.

61. A person took a house under a parol demise on the 11th May, 1781, the rent to commence from *Midsummer* following. On the 26th March, 1785, the tenant was served with a notice to quit on the 29th September following. The question was, Whether the rule which requires *half a year's notice* to be given to a tenant at will, also requires that such notice should *expire at the end of the year*; and the court held that it must so expire with the end of the year.

Right v. Dar-
ley, Easter
Term 26 Geo.
3.

62. The case of *lodgings* depends upon the *particular contract* under which they are taken, and is an exception to the general rule: The agreement may be for a month, or less time, and then a much shorter notice to quit would be sufficient, where the tenant has *held over* the time agreed upon.

1 Term Rep.
163.

63. Where an infant becomes intitled to the reversion of an estate leased from year to year, he cannot eject the tenant without giving the same notice as the original lessor must have given.

Baker v.
White 2 Term
Rep. 159.

64. By the custom of *London* a tenant at will under the yearly rent of *forty shillings* shall not be turned out without a quarter's warning; and a tenant paying above forty shillings yearly is not to be turned out unless half a year's warning be given: and in all cases when the rent is made payable *half yearly* there must be half a year's notice to quit.

Bac. Abr. 689.

VIII. Of holding over, and double Rent.

If the tenant after notice from his landlord to quit, hold over, he shall be liable to pay double rent.

Tenant gives notice to quit and afterwards holding over, becomes thereby liable to pay double rent.

2 Bl. Rep. 1075.

1 Bl. Rep. 533.

Loft Rep. 276.

Dougl. 663.

65. By 4 Geo. 2. c. 28. "If any tenant for life or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time that he shall so hold over, pay double the yearly value thereof; to be recovered by action of debt in any court of record."

66. By 11 Geo. 2. c. 19. § 18. "If any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators shall from thenceforward pay double rent; to be recovered in like manner as the single rent."

67. The notice to quit under these statutes, must be previous to the expiration of the lease.

68. A *parol* notice to quit, by a tenant on a *parol* lease, is sufficient within the meaning of the statute 11 Geo. 2. c. 19.

69. If an action be brought on the statutes for double rent, for two years holding over, the jury may find for so much as, upon the evidence, the tenant appears to have over held beyond the term, provided they find not beyond what is laid in the declaration.

70. In an action on the statute 11 Geo. 2. c. 19. for double rent, if the plaintiff declare on a demise for *three* years, and prove a lease from *year to year*, it is a fatal variance.

FORM OF NOTICES TO QUIT PREMISES.

A landlord's notice to a tenant.

71. SIR, I do hereby give you notice to quit the house and garden you hold of me, situate at _____, in the county of _____, at the yearly rent of _____ pounds per year, on or before *Midsummer-day* next.

Dated the _____ day of _____, 1787.

Yours, &c.

I. H. landlord of the said premises.

To T. T. the tenant thereof. (a)

(a) NOTE: The notice or warning to quit must be in writing, and it must be directed to the tenant who

is in possession of the premises, but notices need not be stamped.

Notices to quit Premises

75

72. SIR, I hereby give you warning of quitting your house on or before *Lady-day* next, of which be pleased to take notice. Dated the day of , 1787.

A tenant's notice to his landlord to quit his premises.

From your humble servant,

D. C.

To Mr. G. M. the landlord of the premises.

73. I do hereby give you notice to quit possession of *(here describe the premises particularly, whether lease, lodgings, chambers; farm or lands, &c.)* situate in the parish of , now in your own possession, or in the possession of , *(as the case is)* which you hold at will, or by virtue of an agreement or lease, *(as the case is.)* Dated the day of . Witness my hand this day of , 1787.

A warning from a landlord to his tenant to quit possession: in the common form.

A. B. landlord, or C. agent for the said Mr. A. B. legally authorized.

To Mr. J. S. the tenant, These.

74. Mr. J. H. I hereby give you notice to deliver up the possession to Mr. T. K. of the messuage or dwelling-house, with the appurtenances, which you rent of me in , in the county of , on *Lady-day* next. Dated this day of , 1787.

In another form.

Yours, &c.

D. C.

To Mr. J. H. the tenant, These.

75. To Mr. F. G. I hereby demand of you, and give you notice that you are to deliver up the possession of the house with the appurtenances, in the parish of , in the county of , now in your own occupation, to Mr. A. B. your landlord, at *Lady-day* next ensuing the date hereof; and in default of your compliance therewith the said A. B. doth and will insist on your paying unto him from thenceforward, for the same, the yearly rent or sum of pounds, being double the former rent or value thereof, for so long time as you shall detain the key, and keep possession

A notice to a tenant to deliver up possession; or, on refusal, to pay double rent. (a)

(a) This notice is under the statute 4 Geo. 2. c. 28.—See Douglas v. 283 and 624, the Cases of Moss v. Gallimore, and Bradbury v. Wright.

fion

The Law of Distress for Rent.

sion of the said premises over the said notice. Given under my hand this day of , in the year of our Lord .

N. M. agent for the said
Mr. A. B. legally authorized.

To Mr. F. G. the tenant, These,

CHAPTER THE SEVENTH.

The Law of Distress for Rent.

1. **A** DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed. It may be taken for neglecting to do suit in the lord's court, (a) or other personal service (b); for amerciaments in a court leet, but not in a court baron; (c) where a man finds beasts wandering in his grounds *damage-feasant*, that is doing him hurt or damage by treading down his grass or the like; and for several duties and penalties inflicted by divers acts of parliament (d). But the most usual injury for which a distress may be taken, and to which our present enquiries will be entirely confined, is that of non-payment of rent, for, although by the common law this remedy was not incident to every species of rent, yet, now by the 4 Geo. 2. c. 28. all material distinction between them is abolished, and we may lay it down as an universal principle that A DISTRESS may now be taken for any kind of rent in arrear, the detaining of which, beyond the day of payment is an injury to him that is intitled to receive it: And we shall consider,

1. *Who may or may not distrain.*
2. *Of what things a distress may be taken.*
3. *At what time the distress shall be taken.*
4. *Where the distress shall be made.*
5. *How a distress shall be disposed of by the common law.*
6. *How the goods distrained shall be disposed of BY STATUTE.*
7. *Of irregularity and excessive distress.*
8. *Of rescuing a distress; and*
9. *Of the landlord's remedy where there is not sufficient to distrain.*

(a) Bro. Abr.

15.

(b) Co. Lit. 46.

(c) Brownl. 36.

(d) 7 Ann c. 10.
for assessments
made by com-
mission of
sewers: and by
43 Eliz. c. 2.
for the poor's
tax.

I. Who may or may not distrain for Rent.

2. By the common law the executors or administrators of tenants in fee-simple, fee-tail, and terms of lives of rents services, rent charges, rents seck and fee farm had no remedy to recover the arrears of such rents as were due in the life-time of the testator or intestate, nor could the heir or reversioner distrain or have any action for the same, it is therefore enacted, by 32 Hen. 8. c. 37. "That the executors and administrators of every such person to whom any such rent or fee-farm shall be due and not paid at the time of his death, to distrain for the arrears of all such rents and fee-farms upon the lands, tenements or hereditaments which were charged with payment of such rents and chargeable to the distress of the said testator so long, as the said lands, &c. shall continue, remain and be in the seisin or possession of the tenant in demesne who ought to have paid the said rent."

Executors or administrators may distrain for rent due in the life-time of the testator or intestate.

3. By 32 Hen. 8. c. 37. s. 7. "Any husband having in right of his wife any estate in fee-simple, fee-tail, or for term of life of, or in any rents, may after the death of his wife, or his executor or administrator have an action of debt against the tenant who ought to have paid the same his executor or administrator, or also the said husband, after the death of his wife, may *distrain*, for the said arrears in the same manner and form as he might have done if his said wife had been then living."

A husband who is landlord or lessor of lands in right of his wife or his personal representative may distrain after her death, &c.

And by the same statute the same power is given to tenants *per autre vie* to distrain or bring debt for the rent arrear during the life of *cestui que vie*.

Co. Lit. 351. b.

4. By 17 Car. 2. c. 7. In all cases, Where the value of the cattle distrained shall not be found to be of the full value of the arrears distrained for; the party to whom such arrears are due, his executors or administrators may distrain again for the residue of the said arrears."

Landlords may distrain twice for one rent.

5. By 8 Ann c. 14. s. 6. "Persons having any rent in arrear or due, upon any lease for life or lives or for years or at will ended or determined may *distrain* for such arrears after the determination of the said respective leases in the same manner as they might have done if such lease had not been determined." PROVIDED that such distress be made within six months after the determination of the lease, and during the continuance of the landlord's title and tenant's possession.

Landlords or lessors may distrain within six months after the determination of the term.

6. By

A mesne landlord may distrain under a new chief lease, although the under leases were not surrendered.

Landlords may distrain and sell goods fraudulently carried off the premises.

The landlord cannot seize goods so removed if sold to persons not privy to the fraud; but he shall recover double the value of the goods so conveyed away: or if the value of the goods do not exceed fifty pounds he may apply to a justice of the peace.

6. By 4 Geo. 2. c. 28. s. 6. "CHIEF LEASES for life or years may be renewed without the UNDER LEASES which are derived out of the same, being surrendered, and the like *distress* or entry may be had as if the former chief lease had been still kept on foot and continued, or the under leases had been renewed under such new principal lease."

7. By 11 Geo. 2. c. 19. s. 1. "In case any tenant or lessee for life or lives, term of years, at will, at sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently, or clandestinely convey away, or carry off or from such premises, his or her goods or chattels to prevent the landlord or lessor, from distraining the same for arrears of rents so reserved, due, or made payable; it shall be lawful to and for every landlord or lessor, in *England*, or any person by him or her for that purpose lawfully empowered, within the space of *thirty days* next ensuing, such conveying away or carrying off such goods and chattels to take and seize such goods and chattels wherever the same shall be found as a *distress* for such arrears of rent; and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such premises for such arrears of rent.

8. "PROVIDED ALWAYS, that no landlord or lessor or any other person entitled to such arrears of rent shall take or seize any such goods or chattels as a *distress* for the same which shall be sold *bona-fide*, and for a valuable consideration before such seizure made to any person not privy to such fraud.—But by the same statute, if any such tenant or lessee shall so fraudulently remove his goods, he, and every person aiding therein shall forfeit and pay to the landlord from whose estate such goods were fraudulently carried off, *double the value* of the goods so conveyed away to be recovered by action of debt in any of the courts of *Westminster*, Great Session of *Wales*, &c. — AND where the goods and chattels so carried off shall not exceed the value of *fifty pounds* the landlord or his bailiff, servant or agent may exhibit a complaint against such offender before two or more justices

“ tices of the peace of the same county, residing near
 “ the place where such goods and chattels are remov-
 “ ed, or near the place where the same were found, not
 “ being interested in the lands or tenements whence such
 “ goods were removed, who may summon the parties con-
 “ cerned, examine the fact and all proper witnesses upon
 “ oath, or affirmation, and in a summary way determine whe-
 “ ther such person be guilty of the offence, and to in-
 “ quire into the value of the goods and chattels so fraudu-
 “ lently carried off or concealed, and upon full proof of the
 “ offence by order under their hands and seals, shall ad-
 “ judge the offender to pay double the value of the said
 “ goods and chattels to such landlord or landlords, his, or
 “ her bailiff, servant or agent, at such time as the said
 “ justices shall appoint, and in case the offender, having
 “ notice of such order, shall resign or neglect so to do,
 “ may and shall by warrant under their hands and seals
 “ levy the same by distress and sale of the goods and chat-
 “ tels of the offender, and for want of such distress may
 “ commit the offender to the house of correction, there to
 “ be kept to hard labour for six months, unless the money
 “ so ordered shall be sooner paid.

9. “ PROVIDED ALSO, That any person may appeal to the
 “ next General or Quarter Sessions for the same county,
 “ who shall hear and determine such appeal, and give such
 “ costs to either party as they shall think reasonable, whose
 “ determination therein shall be final.

Party aggrieved
may appeal.

10. “ PROVIDED ALSO, That where the party appealing
 shall enter into a recognizance with one or two sufficient
 surety or sureties, in double the sum so ordered to be
 paid with condition to appear at such General or Quar-
 ter Sessions, the order of the said two justices shall not
 be executed against him in the mean time.

Where there is
a recognizance
the order shall
not be executed
until the appeal
be determined.

11. By 11 Geo. 2. c. 19. s. 7. “ It is further enacted,
 “ That where any goods or chattels fraudulently or clan-
 “ destinely conveyed or carried away by any tenant or
 “ lessee his or her servant or other person aiding or assisting
 “ therein, shall be put, placed, or kept, in any house,
 “ barn, stable, out-house, yard, close, or place locked up,
 “ fastened or otherwise secured, so to prevent such goods
 “ or chattels from being seized and taken as a distress for
 “ arrears of rent; it shall and may be lawful for the land-
 “ lord or lessor his or her steward, bailiff, receiver, or other
 “ person

A landlord hav-
ing a right to
distrain may
break open
houses, &c. to
seize goods
fraudulently se-
cured herein.

The Law of Distress for Rent.

“ person empowered to take and seize, as a distress for rent,
 “ such goods and chattels (first calling to his or her assistance, the constable, headborough, borough, or
 “ other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be
 “ concealed, who are hereby required to aid and assist
 “ therein, and in case of a dwelling house, oath being also
 “ first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are
 “ therein) in the day-time to break open and enter into
 “ such house, barn, stable, out-house, yard, close, and
 “ place; and to take and seize such goods and chattels for
 “ the said arrears of rent, as he or she might have done
 “ by virtue of this or any former act if such goods and
 “ chattels had been in any open field or place.”

Landlords may
 distrain when
 the demise is
 not by deed.

(a) Actions for
 use and occupation
 cannot be
 maintained in
 the Court of
 Conscience in
 London.
 Dougl. 244.

12. By 11 Geo. 2. c. 19. s. 14. “ To obviate difficulties that may occur when the demises are not by deed, it shall and may be lawful to and for the landlord where the agreement is not by deed to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case for the *use and occupation* (a) of what was so held or enjoyed and if in evidence on the trial of such action any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but make use thereof as an evidence of the *quantum* of the damages to be recovered.”

13. The Lord of a manor may distrain for rent, service, or an amercement in his leet, or for damage feasant; a commoner, or a tenant in sufferance may distrain the cattle of a stranger *damage feasant*; and so may any person, claiming a rent either by prescription or grant, for rent arrear.

14. By the statute of uses, the person to whose use any other man is enfeoffed of lands and tenements may distrain.

15. If sheep are delivered to a single woman to dung her land and she marries, and the husband commands the owner to take the sheep off the land, who refuses, the husband may distrain them *damage feasant*.

16. If a person possessed of two hundred acres of open moor land sells, fifty acres thereof, each party ought to inclose

close against the other, and if the cattle of one go into the land of the other, they may be distrained doing mischief.

17. If a person make a gift in tail to another, reserving fealty and a certain rent; and afterwards grant away the fealty, reserving the rent and reversion to himself; in this case he may distrain for the rent; for the grant of the fealty is void, as it cannot be reserved from the reversion.

18. Also if a rent be assigned to make a partition or an assignment of dower equal, he or she to whom the rent is assigned may distrain for the same.

19. If a man seised in fee make a gift in tail or a lease for life, years, or at will, saving the reversion to himself, with a reservation of rent or other services; the law gives the donee or lessor, without any express provision, remedy for such rent or services, by distress; but if the donor or lessor reserve not the reversion, he cannot distrain of common right, but he may reserve to himself a power of distraining, or the reservation may be good to bind the lessee by way of contract for the performance whereof the lessee shall have an action of debt.

Lit. sect. 214.
Co. Lit. 142.
Cro. Eliz. 636

Co. Lit. 47.
5 Co. 2.
2 Saund. 303.

20. If a termor grant or assign over all his term, rendering rent, he cannot distrain for it: So, also, if a man seised in fee, or for life, of a rent charge, after arrears incur, grant over the rent to another, he cannot distrain for these arrears, because they are by the grant divided from the freehold of the rent.

2 Lev. 80.
Co. Lit. 292.
See Cooper's
Case. 2 Willf.
375.

21. A sheriff may distrain the goods of any man at any place within his county in another man's house or ground as well as the owner's.

4 Co. 50.
Vaugh. 40.
1 Roll. Abr.
672.

22. A bailiff, where a lawful tender of rent has been refused, may not distrain without the command of the landlord; nor will such a distress be justifiable if the tenant can support the tender.

23. A mortgagee, after giving notice of the mortgage, to the tenant in possession under a lease prior to the mortgage is intitled to the rent in arrear at the time of the notice as well as to what accrues afterwards, and he may *distrain* for it after such notice.

Moss v. Gallimore, Mich.
20 Geo. 3.
Doug. 279.

24. On a grant of a fee farm rent "without any deduction, defalcation or abatement for or in any respect whatsoever," the grantee is intitled to receive the full rent without deducting the *land tax*; but he cannot *distrain* for a fee farm rent, unless the case is brought within the statute of 4 Geo. 2. c. 28. s. 5.

Bradbury v. Wright, Hilary,
21 Geo. 3.
Doug. 624.

G

25. By

The Law of Distress for Rent.

(a) Vide ante,
Ch.

Buckley v.
Taylor,
2 Term Rep.
600.

25. By the statute 4 Geo. 2. c. 28. " All and every person or persons, bodies politic and corporate, shall and may have the like remedy by *distress*, and by impounding the same, as are given for other rents by the said statute (a).

26. " AND ALSO in cases of *rents seck*, *rents of assize* and *chief* rents, which have been duly answered or paid for the space of *three years* within the space of *twenty years* before the first day of the then session of parliament, or shall be hereafter enacted, AND ALSO in cases of rent reserved upon lease."

27. If a husband lease his wife's land, and the wife dies without having had issue, the husband cannot distrain, because the reversion goes to her heir.

28. If a trader, after committing an act of bankruptcy, take a house, and agree to pay half a year's rent in advance, where by the custom of the country half a year's rent becomes due on the day on which the tenant enters; THE LANDLORD, after an assignment under the commission and before the year expires, may *distrain* the goods on the premises for half a year's rent; or if he buy the tenant's goods at a sale under the commission, he may retain the amount of the half year's rent.

II. Of what Things a Distress may be taken.

1. DISTRESSES may be made either for cattle, trespassing and doing damage, or for non-payment of rent, or other duties.

2. Distresses for rent must be for rent in arrear; and therefore it may not be made on the same day the rent becomes due; for, if the rent be paid at any time of that day, while the man can see to count the money, the payment is good.

3. A distress cannot be made after tender of payment; for, if the landlord come to distrain the goods of his tenant for rent behind, the tenant may, before the distress, tender the arrears upon the land; and although the landlord have distrained, if the tenant before the impounding thereof tender the arrears, the landlord ought to detain the distress, and if he do not, the detainer is unlawful; but if the thing distrained be impounded, the tenant cannot take it out of the pound, although the tender be refused, or the distress made without cause; but he must replevy; for after impounding it, it is in the custody of the law.

4. Distress

4. Distress for rent must be of a thing whereof a valuable property is in somebody, and therefore dogs, bucks, does, conies and the like, that are *fera natura* cannot be distrained.

Co. Lit. 47.

5. Things fixed to the freehold as part of the freehold, as furnaces, cauldrons, doors, windows, cannot be distrained: But if they are those kind of fixtures, which, in equity, the tenant would be permitted to take away, *quare*, if they may not be distrained.

Fixtures cannot be distrained.

6. By the statute 2 Will. 3. c. 5. "Persons having rent arrear on any demise, lease, or contract, may seize and secure any sheaves, or cocks of corn, or corn loom, or in the straw, or hay being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or distrain the same in the place where found, in the nature of a distress, so as the same be not removed to the damage of the owner, out of the place where found and seized, but be kept there (as impounded) till replevied or sold."

Corn or hay cut may be distrained for rent.

7. But by 11 Geo. 2. c. 19. s. 8. "Every landlord or lessor, his steward, bailiff, receiver or other person empowered by him, may take and seize as a distress for arrears of rent, any cattle or stock of his tenant feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to all or any part of the premises demised or holden.

Cattle on commons may be distrained.

8. "AND ALSO, may take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing thereon, or on any part of the estate so demised or holden, as distress for arrears of rent; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barn or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure, for that purpose, and as near as may be to the premises—and in a convenient time to appraise, sell or otherwise dispose of the same, towards satisfaction for the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods or chattels may be seized, distrained, and disposed of; and the appraisement thereof to be taken, when cut, gathered, cured, and made, and not before.

And corn or other grain growing may be distrained and taken when ripe; and lodged in the barn on the premises, or if there be no barn, removed.

But notice must be given to what place removed.

And on tender of rent and costs, shall be restored.

9. "PROVIDED ALWAYS, that notice of the place where such goods and chattels so distrained shall be lodged or deposited, shall, within the space of one week after the lodging or depositing thereof in such place, be given to the lessee or tenant, or left at the place of his or her abode.

10. "AND IF after any distress for arrears of rent so taken for corn, grass, hops, roots, fruits, pulse or other product which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured or gathered, the tenant or lessee, his or her executors, administrators or assigns, shall pay or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rent of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby; that then, and upon such payment, or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease, and the corn, grass, hops, roots, fruits, and pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns."

11. By 11 Geo. 2. c. 19. §. 18. Tenants holding over, after they have given notice to quit, shall pay double rent, to be levied, &c. in the same manner as the single rent might have been levied, &c.

12. No man can be distrained by the utensils of his trade for rent, as beasts of the plough, the axe of a carpenter, the books of a scholar, the materials for making cloth in a weaver's shop; for these the law protects under a presumption that without them the tenant could neither be useful to others nor gain a livelihood for himself.

13. A landlord may, in general, distrain whatever he finds on his premises, though not the property of the tenant. But, for the benefit of trade and commerce, some things, when they belong to *third persons*, are privileged from being distrained, as oxen of the plough, a horse in a smith's shop, a horse in an inn, sacks of corn, meal in a mill, cloth or garments in a taylor's shop, a sack of corn or meal in a market, goods on a wharf or in a warehouse for exportation,

Co. Lit. 47.
1 Mod. 104.
1 Lev. 96.
Ld. Ray. 385.
2 Stra. 1228.
Sed vide
3 Salk. 136.
and Bisset v.
Caldwell,
post. pl. 29.
Co. Lit. 47.
3 Bulst. 270.
Cro. Eliz. 549.
See 3 Burr.
1489.

portation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, &c. But it has been determined, that a gentleman's chariot, standing at a livery stable, may be distrained, for rent due from the stable-keeper to his landlord. So also a *race horse*, standing in a stable half a mile from the inn, may be distrained: And so may the household furniture of lodger or an inmate. (a) If a horse carries corn to a mill, and is tied at the mill door during the grinding of the corn, the horse shall not be distrained; but cattle driving to a market, and by the way put into a pasture, may be distrained, unless they were so taken in by collusion of the landlord.

Francis v. Wyat,
Trin. Term
1498. 1 Black.
Rep. 483.
Barnes 472.
1 Black. 483.
Cro. Eliz. 550.
2 Vent. 50.
2 Vin. 130.
2 Bac. Abr. 108.
in notes.
3 Lev. 260.
Pre. in Ch. 7.
Co. Lit. 47.

14. Things distrained, *damage feasant*, cannot be distrained for rent.

15. By the statute 51 Hen. 3. c. 4. "No man shall be distrained by the beasts that go in his land, nor by his sheep, but until another distress or chattels be found, except for *damage feasant*." This statute, therefore, extends only to distresses between LANDLORD and TENANT.

2 Inst. 133.
Dyer 312.
1 Sid. 348.

16. Cattle which are in certain land, by way of *agistment*, may be distrained for rent; and generally whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent.

1 Roll. Abr.
669.
3 Bl. Com. 8.

17. Horses joined to a cart, with a man upon it, cannot be distrained for rent, although they may be distrained for *damage feasant*; but if the man be not upon the cart, the cart and horses may be distrained for rent.

1 Vent. 36.

18. Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained; but money in a bag sealed may be distrained; for the bag being sealed may be known again.

1 Burn's Justice
477.

19. Where a *stranger's* beasts escape into the land, they may be distrained for rent, though they have not been *levant and couchant*, provided they are trespassers: But, except in the case of an *ancient seignory*, if the tenant of the land is in fault in not repairing his fences, whereby the beasts came into the land, the LANDLORD cannot distrain

Lutw. 364.
See the case of
Kemp v. Crews,
Ld. Ray. 168.

(a) The goods of a *third person* to be exempted from distress, must be goods in the way of trade; and therefore where the captain of a ship had sent his sails, &c. to a sail-maker,

to lie in his warehouse until the ship went out again, was, on the jury holding them to be articles in the way of trade, held by LORD KENYON exempt from distress.

2 Vern. 231.
3 Com. Dig. 117.

1 Roll. Abr.
665.

2 Vent. 228.
283.

1 Salk. 248.
1 Ld. Ray. 55.
384.

5 Mod. 362.
Cowp. 661.

Ld. Ray. 720.

Gilbert 34.

2 Lutw. 1532.
Cro. Eliz. 13.
4 Burr. 590.
3 Black. Com.
41, 12.

(e) By 19 Car. 2.
c. 5. this act is
extended to
Wales and the
counties palatine.
Dougl. 411.

Bisset v. Cald-
well and Tayler
at nisi prius, in
B. R. in Hilary
Term 31 Geo. 3.

such beasts, though they have been *levant and couchant*, unless he have caused notice to be given to the owner, and the owner suffer them to remain there afterwards.

20. If a man hath common for ten cattle, and he put in more, the surplufage above ten may be taken *damage feasant*.

21. If *A.* tenant in common with *B.* and *C.* leave his third part, the cattle of *B.* or *C.* or any depasturing by their licence, cannot be taken for *rent* by *A.*

22. The anchor and sails of a ship, are distrainable for *port duties*; but the tackle of a ship is not distrainable of common right for *toll*; but by custom it may; the law making a difference between the distresses which are allowed for *rent*, and for a *toll*; nor can a distress be made for the toll of goods fraudulently sold out of a market to avoid the toll.

23. On a lease of tithes, rendering rent, no distress can be made of the tithes, because the tithes are the things leased.

24. If cattle, after they are distrained, are put into an open pound, and there die; the person who distrained, may bring his action for the rent, or may distrain again; and if they are stolen thereout, he has the same elective remedy.

25. A mill-stone cannot be distrained, though it is raised to be picked, so long as it lies on the other stone.

26. A person cannot distrain for part of his rent, and make a second distress for the remainder; for when a man is intitled to distrain for an intire duty, he ought to distrain for the whole at once, and not for part at one time, and part at another; but if he distrain for the whole, and there is not sufficient on the premises, or if he happen to mistake in the value of the thing distrained, and so takes an insufficient distress, he may take a second distress to compleat his remedy: And, indeed, it is enacted by the 17 Car. 2. c. 7. §. 4. that in distraining cattle for rent, if they shall not be found to be of the full value of the arrears distrained for, the party, his executors and administrators may, from time to time, distrain again for the residue of the said arrears. (a)

27. If a candle-maker, or maltster, *forfeit* the single duties, and then become a bankrupt, and is *convicted* after the assignment of his estate, the double duties may be *distrained* for on the candles, malt, utensils, and materials, in the hands of the assignees.

28. On an action of trespass for a distress for rent, it appeared that part of the things taken was the wife's and childrens' cloaths, while they were in bed, which they had taken

taken off the preceding evening, meant to put on when they got up, and were in the daily habit of wearing: It was objected, (a) that these were things that could not be taken in distress: LORD KENYON, *Chief Justice*, said, that this was *vexata questio*; and, at common law, such things could not be distrained, because it would be unprofitable to the common-wealth, as they could not, while a *pledge*, be laboured; but since the statute of *William and Mary*, had allowed a distress to be sold, the reason of the common law had vanished; and therefore he held them liable to the distress.

(a) By Mr. Erskine.

29. On a custom, that a tenant may leave his *way-going* crops in the barns of the farm for a certain time after the lease is expired, the landlord, although the tenant has quitted the premises, may distrain the corn so left for rent arrear, after six months have expired from the determination of the term.

Beavan v. Delahay, C. B. Easter, 23 Geo. 3.

III. At what Time a Distress shall be taken.

1. A DISTRESS for rent cannot be made in the night, but one may distrain cattle, *damage feasant*, in the night; for otherwise they might be gone before the morning; and, therefore, no distress, except for *damage feasant*, can be made before *sun-rising*, and after *sun-set*.

Co. Lit. 142. 767. 9 Co. 66. Latch. 211.

2. A distress for rent cannot be made upon the day on which the rent became payable, for it cannot be due until the last hour of that day; nor, by the common law, could a distress be made after the lease or term was expired, but now by 8 Ann. c. 14. it may be made at any time within six months after.

Mirror, c. 2. f. 26.

Dr. & St. b. 2. c. 9. Co. Lit. 47.

Vide ante p.

3. No distress ought to be made on a *Sunday*, except for *damage feasant*.

4. If a person grant a lease, and after the expiration of the lease, there is rent in arrear, no distress can be made for it, *except* the landlord's title, and the tenant's possession, continue; and if a lease be made till *Michaelmas*, for one year, rendering rent at *Michaelmas*, the landlord cannot distrain before *Michaelmas*, at which time his term ended.

5. A distress may be made for rent, accrued after a notice to quit, has expired; but it is a waiver of the notice.

Touch v. Willingale, Hilary, 30 Geo. 3. C.B.

6. By 8 Ann. c. 14. f. 6. Goods may be distrained for rent arrear, at any time within six months after the expiration of the lease.

IV. In what Place a Distress may be made.

2 Inst. 104.
2 And. 71.

1. By the 52 Hen. 3. c. 2. "None shall *distrain* any to come to his court, which is out of his fee, or upon whom he has no jurisdiction, by reason of a hundred or bailiwick; NOR take *distresses* out of the fee or place where he hath jurisdiction."—This statute is a declaration of the common law, and means *suit service* in respect of a *seignory*, and not *suit real*, in respect of *residence*; but no distress is prohibited, by this act, in any place where a person hath power, or otherwise, to distrain.

2 Inst. 131.
Mirror c. 2. f.
26.

2. By 9 Edw. 2. c. 9. "The king's officers, as sheriffs, and others, shall not take distresses in the fee, wherewith churches, in time past, have been endowed;" but *distresses* may be taken in possession of the church newly purchased.

2 Inst. 131.
Sec 2 Bac. Abr.
p. 111. in notes.

3. By 52 Hen. 3. c. 2. "No person, except the king's officers, shall take distresses in the *king's highway*," for the king's subjects ought to have free passage, as well to fairs and markets, as about their other affairs.

Sed vide ante p.
78. Sect. 7.

4. By 8 Ann. c. 14. "In case any lessee for life or lives, term of years, at will, or otherwise, of any messuages, lands or tenements, upon the demise whereof any rents shall be reserved or made payable, shall fraudulently or *clandestinely* convey or carry off, from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved as aforesaid: It shall and may be lawful for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within the space of *five days* next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of such rent; and the same to sell or otherwise dispose of in such manner, as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such demised premises, for such arrears of rent; any law, custom, or usage, to the contrary in any-wise notwithstanding. PROVIDED, that nothing in this act shall empower such lessor or landlord to take or seize any goods or chattels, as a distress for arrears of rent, which be sold *bona fide*, and for a valuable consideration, before such seizure made."

Landlord may
seize goods fraudulently carried
off the premises,
&c.

Sect. 3.

Unless sold bona
fide.

5. By

5. By 11 Geo. 2. c. 19. If goods be fraudulently conveyed off the premises, the landlord may, within thirty days, distrain them at *the place* to which they are so fraudulently removed.

See the statute more at large, ante p. 78.

6. A distress for rent may be made in any part of the land out of which the rent issues, or if a house be upon the land demised or charged, a distress may be made in the house when the house is *open*; so also it may be taken out of a window, but one cannot break open the outer-door to distrain; and therefore it was held by LORD HARDWICKE, that the breaking of a padlock put upon a barn door, by force, in order to distrain the corn lodged therein, was illegal; (a) but if the outer-door be open, one may break open the inner-door to distrain.

1 Roll. Abr. 671.
5 Co. 92.
Com. 17.
2 Bac. Abr. 111.
3 Com. Dig. 116.

(a) 9 Viner's
Abr. 126; but

7. If land lie in two counties, a distress may be made for the whole rent in either county: So if it be in the hands of many tenants, it may be for the whole in the land of any tenant; but if two parcels of land are let by the same lessor to the same lessee, by separate demises, and rent due on both, there cannot be a joint distress for both.

1 Roll. Abr. 671.

Rogers v. Buck-
mire, Stra.
1040. B. R. H.
245.

V. How a Distress shall be disposed of by the COMMON LAW.

1. A DISTRESS, by the common law, cannot be sold, but must, in the first place, be carried to some pound, and there impounded by the taker. A POUND, is either *pound overt*, that is, open-head, or *pound covert*, that is, close.

Distress must be
pounded.

2. By the statute 1 & 2 Philip & Mary, c. 12. no distress of cattle can be driven out of the hundred where it is taken, unless to a pound-overt, within the same, and within three miles of the place where it was taken; and no single distress of goods or cattle shall be impounded in several places, to enforce several *replevins*, on pain of five pounds and treble damages; AND none shall take above *four-pence* for impounding of any one distress, on pain of *five pounds* above the money so taken.

Cattle driven
out of the hun-
dred, must be to
pound overt.

3. If a distress of live animals, be impounded in a common POUND-OVERT, the owner must take notice of it at his peril; but if in any special pound-overt, so constituted for this particular purpose, the distrainer must give notice to the owner; and in both these cases, the owner, and not the distrainer, is bound to provide the beasts with food and necessaries; but if they are put in a pound-covert, as in a stable, or the like, the landlord or distrainer must feed and sustain them: A distress of household goods, or
other

Co. Lit. 47.
2 Inst. 106.
Owen 124.
Dyer 280.
Co. Jac. 148.

other dead chattels, which are liable to be stolen or damaged by weather, ought to be impounded in a pound-covert, also the distrainer must answer for the consequences.

(a) Vide post, 93.

31 Geo. 2. c.

39.

1 And. 65.

1 Roll. Abr.

673.

2 Will. 313.

Gilbert 52.

1 Leon. 220.

Cro. Eliz. 783.

1 Leon. 220.

6 Mod. 216.

2 Stra. 1272.

4. A distress cannot be used or abused; for it will make him who distrained a trespasser *ab initio*; (a) as if he drive cattle distrained into another county, and then sell it; or if a horse be tied to the pound, to prevent his leaping out, and he strangles himself; or if a man work cattle distrained; or if a man distrain a hide, and then tans it, although it be for its preservation: So if a man milk a cow, though it be for the benefit of the cow: But a using for the benefit of the owner shall be allowed, as if a man be taken for distress, and the taker secures it; so if cows, horses, &c. be taken in *withernam*, they may be milked or worked in a reasonable manner; for they are delivered to the party in lieu of his own cattle; and if a man distrain for several barrels of beer, and draw beer out of any of them, he is a trespasser *ab initio* as to that barrel only.

5. Impounding a distress in another county, does not make the party a trespasser.

6. If turfs lie on a common, *damage feasant*, a commoner may distrain them, but he cannot *burn* them.

VI. How a Distress shall be disposed of by STATUTE.

1. A DISTRESS can only be made by and according to the rules of the common law, and the thing taken, being intended merely to procure a satisfaction for an injury committed, or a duty not performed, was considered only as a *pledge* to compel performance or recompence, and therefore could not be sold; but this being found inconvenient in distresses for the recovery of *rent in arrear*, the legislature interposed to remedy it.

(a) N. B. At the common law no notice of distress was necessary; therefore landlord may seize goods under a distress, and keep them as a pledge; but he cannot proceed to sell them, unless notice has been given pursuant to this statute.

2. By the 2 Will. & Mary, c. 5. therefore it is enacted,
 " That where any goods or chattels shall be distrained for
 " any rent reserved and due upon any demise, lease, or
 " contract whatsoever, and the tenant or owner of the
 " goods so distrained on, shall not within *five days* next
 " after such distress taken, and notice thereof (a) (with the
 " cause of such taking) left at the chief mansion-house, or
 " other most notorious place on the premises charged with
 " the rent distrained for, *replevy* the same, with sufficient
 " security to be given to the sheriff according to law; that
 " then and in such case after such distress made and notice

" as

“ as aforesaid given, and at the expiration of the said five
 “ days, the persons distraining shall and may with the sheriff
 “ or under-sheriff of the county, or with the constable of
 “ the hundred, parish or place, where such distress shall be
 “ taken, (who are hereby required to be aiding and assisting
 “ therein) cause the goods and chattels so distrained to be
 “ appraised by two sworn appraisers (whom such sheriff,
 “ under-sheriff or constable, are hereby empowered to swear
 “ to appraise the same truly according to the best of their
 “ understanding) and after such appraisement, shall and
 “ may lawfully sell the goods and chattels so distrained, for
 “ the best price that shall be gotten for the same, towards
 “ the satisfaction of the rent, for which the said goods and
 “ chattels shall have been distrained, and of the charges of
 “ such distress, appraisement, and sale, leaving the over-
 “ plus (if any) in the hands of the said sheriff, under-she-
 “ riff, or constable, for the owner’s use.”

3. A notice, under this clause of the statute, was given without stating the cause of the taking, and it was contended that the requisites mentioned in the act, are in the nature of conditions precedent, and if not complied with, the proceedings are illegal. But by BULLER, Justice, it is not necessary, by this statute, to set forth in the notice at what time the rent became due.

Moss v. Galli-
 more.
 Dougl 281.

4. If a distress be made in two hundreds viz. A. and B. in different counties, OATH, to the appraisers, upon sale, administered by the constable of the hundred of A. in the hundred of B. is good.

1 Salk. 247.
 1 Ld. Ray. 54.

5. A personal notice of distress is sufficient; for it need not be at the chief mansion-house, or other notorious place, on the premises, the intent of the act being only that the party should have notice, which is performed by this means, better than if it had been left at the house or other notorious place.

4 Mod. 390.
 1 Ld. Ray. 53.
 12 Mod. 76.

6. If the goods distrained are not the goods of the tenant himself, notice to the owner of the goods is sufficient in trover, or other action for the goods by the owner; but if the tenant had brought replevin for the goods, notice to the owner had not been sufficient, without notice also at the mansion of the tenant, or other notorious place upon the premises.

3 Com.Dig. 123.

7. By 8 Ann, c. 14. which authorises a landlord to have one year’s rent before an execution can be executed;

(a) and also authorises landlords to seize goods fraudulently

(a) Ante p. 88.

carried

(a) Ante p. 78. carried off the premises. (a) It is enacted, that all *distresses* to be made, shall be liable to such sales, and in such manner, as by 2 *Will. & Mary, c. 5.* is described, and the money arising by such sales, to be distributed in like manner.

Distresses may be secured and sold on the premises.

8. By 11 *Geo. 2. c. 19.* "It shall and may be lawful to
 "and for any person or persons lawfully taking any distress
 "for any kind of *rent*, to impound or otherwise to secure
 "the distress so made, of what nature or kind soever it
 "may be, in such place, or on such part of the premises
 "chargeable with rent, as shall be most fit and convenient
 "for impounding and securing such distress; and to appraise, sell, and dispose of the same upon the premises, in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do of the premises, by virtue of the acts already in force; AND THAT it shall and may be lawful to and for any person or persons whatsoever, to come and go to or from such place or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise, and buy, AND ALSO in order to carry off or remove the same on account of the purchaser thereof; AND THAT if any pound-breach or *rescous* shall be made of any goods and chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this act, the person or persons aggrieved thereby shall have the like remedy, as in case of *pound-breach*, or *rescous*, is given and provided by the said statute."

4 Mod. 390.

9. A sale by the distrainer, or his tenant, is sufficient, though the sheriff, &c. be not present at the sale; and a sale for the price at which they are appraised, shall be intended the best price, if the contrary do not appear.

1 Ld. Ray. 55.

Rex v. Cotton, Trinity Term 1755, in the exchequer; and the judgment affirmed on a writ of error.

10. If a distress be made for rent, and before the five days given by the statute of *William and Mary*, be expired, AN EXTENT is issued, though it be not levied for a debt due to the crown, the EXTENT shall take place of the DISTRESS; because the distress doth not oust the property of the effects into the landlord, but is only a *pledge* in his hands for security for his rent.

Wallace v. King Easter, 23 Geo. 3. C. B.

11. The five days allowed by 11 *Geo. 2. c. 19.* before a distress can be sold, are *inclusive* of the day of the sale.

VII. Of an irregular and excessive Distress.

1. THE statute of the 2 Will. & Mar. c. 5. enacts, Griffin v. Scot. Stra. 717. that "if the tenant do not within *five days* next after the "distress, &c. replevy the same, the person distraining shall, "after appraisement, sell them;" and, therefore, if he do not remove the goods within the five days, he will be subject to an action of trespass, for the surplus time he lets them remain.

2. And by said 2 Will. & Mary, c. 5. s. 5. "In case "any such distress and sale, as the act directs, shall be "made by virtue or color of the act for rent pretended to "be in arrear or due, when, in truth, no rent is in arrear "or due to the person distraining, or to him in whose "name or right such distress shall be taken; the owner of "such goods and chattels so distrained and sold, his ex- "ecutors or administrators may, by action of *trespass* or "case, to be brought against the person so distraining, his "executors or administrators recover double the value of "the goods so distrained and sold, with full costs of suit."

3. The many particulars which attend the taking of a distress, used formerly to make it a hazardous kind of proceeding; for if any one irregularity was committed, it vitiated the whole, and made the distrainers trespassers *ab initio*. 1 Vent. 37. 3 Bl. Com. 14, 15.

4. But by 11 Geo. 2. c. 19. s. 9. "Where any distress "shall be made for any kind of rent justly due, and any "irregularity or unlawful act shall be afterwards done by "the party or parties distraining, or by his, her, or their "agents, the distress itself shall not be therefore deemed "to be unlawful, nor the party or parties making it be "deemed a trespasser or trespassers *ab initio*; i. e. *from the "beginning*, but the party or parties aggrieved by such un- "lawful act or irregularity, shall or may recover full satis- "faction for the special damage he, she, or they shall have "sustained thereby and no more, in an action of trespass "or in an action on the case, at the election of the plain- "tiff or plaintiffs: PROVIDED, that where the plaintiff or "plaintiffs shall recover in that action, he, she, or they "shall be paid his, her, or their full costs of suit, and have "all the remedies for the same as in other cases of costs." Distresses for rent not unlawful, &c. for any irregularity in the disposition of them.

5. By 11 Geo. 2. c. 19. s. 2. "In all actions of *tres- pass* or on the case, to be brought against any person or "persons entitled to rents or services of any kind, his, her, "or In actions against persons intitled to rent, defendants may plead the general issue, &c.

“ or their bailiff or receiver, or any other person or persons, relating to any entry by virtue of this act, or otherwise, upon the premises chargeable with such rents or services, or to any distress or seizure, sale, or disposal of any goods or chattels thereupon; it shall and may be lawful to and for the defendant or defendants in such action to plead *the general issue*, and give *the special matter* in evidence; any law or usage to the contrary notwithstanding: And in case the plaintiff or plaintiffs shall be nonsuited, discontinue his, her, or their action, or have judgment against him, her, or them, the defendant or defendants shall receive double costs of suit.”

Nor tenants to recover on tender of amends.

6. But by 11 Geo. 2. c. 19. s. 20. “ No tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity aforesaid, if tender of amends has been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.”

Bisset v. Caldwell, at nisi prius, B. R. Hilary, 31 Geo. 3.

7. A landlord cannot justify, under the plea of the general issue given by the 11 Geo. 2. c. 19. except for acts done as landlord; and, therefore, although he may justify, as far as the *distress* goes, he cannot justify *expulsion* under this issue: So also if the goods continue on the premises, beyond the *five days*, he cannot justify under this issue, entering the house to remove them afterwards, but must plead a licence to justify the *aspportavit*, or *liberum tenementum*, to justify the expulsion.

1 Term Rep. C. B. 13.

8. Trover will not lie since the 11 Geo. 2. c. 19. for goods taken under an unequal distress; for it must be either case or trespass.

9. As to EXCESSIVE DISTRESS, it is enacted, by 52 Hen. 3. c. 4. commonly called the statute of *Marlbridge*, that distresses shall be reasonable, and not too great; and he that taketh great and unreasonable distresses, for rent arrear, shall be grievously amerced: As if the landlord distrain two oxen for twelve-pence rent; the taking *both* is an unreasonable distress; but if there were no other distress nearer the value to be found, he might reasonably have distrained one of them.

Co. Lit. 160, 161.

10. But for homage, fealty, or suit, as also for parliamentary wages, it is said that no distress can be excessive; for as these distresses cannot be sold, the owner, upon making satisfaction, may have his chattels again.

11. The

11. The remedy, for excessive distresses, is by a special action on the statute of *Marlbridge*; for an action of *trespass* is not maintainable on this account, it being no injury at common law.

VIII. Of rescuing a Distress; AND Pound Breach.

1. RESCUE is, where a man sets at large goods lawfully distrained; but if a distress be taken without cause, or contrary to law, as if no rent be due, or it be taken on the king's highway, or the like, it may be lawfully rescued by the tenant or owner, at any time, before it is impounded. But if it be once impounded, even though taken without any cause, the owner may not break the pound and take them out, for they are then in the custody of the law. (a)

2. If a landlord come to distrain for rent, and see the cattle, and the tenant, or his servants, drive them out of his fee, yet this is no *rescue*, (b) for the cattle were never in his possession; but if the distress be for rent, he may follow them, and distrain them in another man's ground.

3. If a person distrain goods, and do not declare the cause or reason for so doing; if they are put into a house, the owner may break the house, and take them out.

4. If cattle distrained go into the house of the owner, and he, on demand, refuse delivery, it will be a rescue; but if he who takes the distress gets the possession, the redelivery is no rescue.

5. By 2 *Will. & Mary*, c. 5. on a pound breach, or rescue of goods distrained for rent, the person grieved, may, by special action on the case, recover treble damages and costs (c) of suit, against the offender or owner of the goods, if they be found to come to his use or possession.

6. So, by the common law, the master for whom the distress was made, may have remedy by writ of *rescous*.

7. So the party may maintain an action on the case, on the statute of *William and Mary*, though no notice of the distress (d) was given to the lessee; for notice signifies nothing to a wrong-doer.

8. If the tenant tender the rent before distress, which is refused, and the landlord afterwards distrains, or the cattle of a stranger be taken, the tenant, or owner, may lawfully rescue the goods distrained.

9. If a person distrain cattle, and pound them in another man's close, with his consent, and the owner of the cattle take them out; in this case, he that made the distress

Co. Lit. 47.
1 Vent. 104.
Fitz. 35.
4 Burr. 590.

Co. Lit. 160.
3 Bl. Com. 12.
Co. Lit. 47.
F. N. B. 101.
4 Co. 11.

(a) *Sed Quæ*: If he find the pound door unlocked whether he may take them out.

(b) But an action on the case will lie for preventing him from making the distress. F. N. B. 102.

Co. Lit. 161.

Mod. Cases 215.

Lutw. 213.

(c) The costs shall be trebled as well as the damages.

Ld. Ray. 20.
Fitzherbert's Natura Brevium p. 101.

Lut. 214.

(d) Vide ante, p. 91.

Co. Lit. 160.
2 Inst. 107.
3 Com. Dig. 122.

tres shall have an action for *pound breach*, and the owner of the close, an action of *trespass* for breaking his close.

10. If a person break the pound, and take out goods, he that distrains, may have an action against the party for *pound breach*, and may also take the goods again whereforever he finds them, and put them in the pound again.

IX. Of Landlords' Remedy when there is no Distress.

Provision for landlords where tenants desert the premises.

(a) See post. Chap. 9.
EJECTMENT, where a speedy mode is given of recovering possession, when half a year's rent is in arrear, and no distress.

Tenants may appeal from the justices.

1. BY 11 Geo. 2. c. 19. s. 16. “ If any tenant holding
“ any lands, tenements or hereditaments, at a rack-rent,
“ or where the rent reserved shall be full *three-fourths* of
“ the yearly value of the demised premises, who shall be
“ in arrear of *one year's rent*, shall desert the demised pre-
“ mises, and leave the same uncultivated or unoccupied, so
“ as *no sufficient distress* (a) can be had to counterbalance the
“ arrears of rent; it shall and may be lawful to and for
“ two or more justices of the peace of the county, riding,
“ division or place, (having no interest in the demised pre-
“ mises) at the request of the lessor or landlord, lessors or
“ landlords, or his, her or their bailiff or receiver, to go
“ upon and view the same, and to affix, or cause to be af-
“ fixed, on the most notorious part of the premises, notice
“ in writing, what day (at the distance of *fourteen days* at
“ least) they will return to take a second view thereof;
“ and if, upon such second view, the tenant, or some per-
“ son on his or her behalf, shall not appear and pay the
“ rent in arrear, or there shall not be a sufficient distress
“ upon the premises; then the said justices may put the
“ landlord or landlords, lessor or lessors, into the possession
“ of the said demised premises; and *the lease* thereof to
“ such tenant, as to any demise therein contained only,
“ shall from thenceforth become void.

2. By 11 Geo. 2. c. 19. s. 17. PROVIDED, that such pro-
“ ceedings of the said justices shall be examinable in a sum-
“ mary way by the next justice or justices of the assize of
“ the respective counties, in which such lands or premises
“ lie, and if they lie in the city of *London*, or county of
“ *Middlesex*, by the judges of the court of *King's Bench*,
“ or *Common Pleas*; and if in the counties palatine of *Chef-*
“ *ter*, *Lancaster*, or *Durham*, then before the judges there-
“ of; and if in *Wales*, then before the grand courts of
“ session respectively, who are hereby respectively empower-
“ ed to order restitution to be made to such tenant, together
“ with

X. *Precedents and Instructions for making a DISTRESS.*

To be stamped
as a *deed*, viz.
to the amount
of six shillings,
but not on a six
shilling stamp.

H

done,

Precedents for making a Distress.

done, all such acts, matters and things whatsoever, touching, concerning, or any ways relating to the said premises, as shall or may be necessary to or for the purposes aforesaid, as fully and effectually, to all intents and purposes whatsoever, as if I myself was personally present, and did the same, hereby ratifying, confirming, and allowing, all and whatsoever my said attornies or attorney, or either of them, shall lawfully do or cause to be done in or about the said premises, by virtue of these presents. IN WITNESS whereof, I, the said *A. B.* have hereunto set my hand and seal this day of _____, in the year of our Lord 1791.

*Scaled and delivered (being first duly }
stamped) in the presence of us }*

The form of a
warrant to dis-
train.

The like stamp
as the last.

2. KNOW ALL MEN, by these presents, that I *F. G.* of *London*, esq; do hereby authorise and appoint *T. C.* of, &c. gentleman, to take any person or persons to his assistance, and to enter into the house of *A. B.* in, &c. and there make a distress of all such goods and chattels as are in and upon the premises, or any part thereof, for _____ pounds for one half year's rent due to me the said *F. G.* at *Michaelmas-day* last. And after the said goods are so distrained, if the said *A. B.* does not, within the time limited by law, pay the said rent, or replevy the said goods, then and in such case I do hereby authorise you the said *T. C.* to cause the said goods to be appraised, and according to such appraisement, to make sale thereof to such person or persons who will buy the same; and to dispose of the money arising by the sale, in such manner as by the statute made for that purpose is directed: And for your so doing, this shall be your sufficient warrant, WITNESS my hand and seal this day of _____, in the year 1791.

Scaled, &c.

F. G.

To Mr. *T. C.* my Bailiff, *greeting.*

NOTE: This
warrant may be
made on paper
without a stamp.

3. SIR, distrain the goods and chattels of *A. B.* in the house he now dwells in, situate in _____, in the county of _____, for _____ pounds, being *two years* rent (or as the case may be) due to me, for the same at *Michaelmas* last, and for your so doing this shall be your sufficient warrant.

Dated, &c.

F. G.

4. I T. C. as bailiff to Mr. F. G. do distrain this *table* (or the first thing you lay your hands on) in the name of the whole goods and chattels in this house, for and towards the satisfaction and payment of the sum of pounds, being *two years rent* pounds *per annum*, due to the said F. G. at *Michaelmas* last.

Words used in distraining goods, when done by the landlord's bailiff.

5. NOTE. After this proceed to take AN INVENTORY of so much of the goods as you judge will be sufficient to pay the rent in arrear; AND after the inventory is taken, a *fair copy* must be made of it, beginning with the following title, viz.

Inventory on copy.

6. AN INVENTORY of the goods and chattels distrained by me T. C. as bailiff to Mr. F. G. in the dwelling-house of A. B. in , in the county of , this day of , being for *two years rent* due to the said F. G. for the said house and appurtenances therewith demised, at *Michaelmas-day* last, and as yet in arrear and unpaid.

Form of the inventory.

This inventory requires no stamp, the same being expressly excepted in the

act. See stat. 23 Geo. 3. chap. 58. sect. 1.

£. s. d.

I. In the Kitchen.

2 Wainscot tables	-	-	-	-
6 Old chairs	-	-	-	-
5 Copper saucepans	-	-	-	-
2 Pottage pots, &c.	-	-	-	-

II. In the Parlour.

1 Large pier looking-glass	-	-	-	-
2 Sconces in gilt frames	-	-	-	-
2 Mahogany card-tables, &c.	-	-	-	-
1 Pembroke table	-	-	-	-

III. In the Dining-room.

6 Hair-bottom chairs, mahogany frames, &c.	-	-	-	-
1 Set of dining tables.	-	-	-	-

7. NOTE. At the end of the inventory, write the following *notice* to the person whose goods you distrain, viz.

8. Mr. A. B. Take notice that I as bailiff to Mr. F. G. have this day distrained the goods and chattels mentioned in

Notice to the person whose goods are distrained.

Precedents for making a Distress.

the above inventory for the sum of pounds, being *two years* rent due at *Michaelmas-day* last, for the premises above-mentioned, and have secured the said goods and chattels in the *front parlour* of the said house, and that unless the said arrears of rent and charges of distress be paid, or the goods replevied within *five days* from the date hereof, the said goods will be appraised and sold according to law.

Dated, &c.

T. C.

Memorandum of delivering a true copy of the inventory to the tenant.

9. A TRUE COPY of the above *inventory* and *notice* was this day of , 1791, delivered to the above mentioned A. B. in the presence of us,

P. Q.
R. S.

How the inventory and notice must be served.

10. NOTE. This *inventory* with the *notice* thereunder written must be left at the house, with any person dwelling therein; or, if there be no person in the house, on the table in the kitchen, or some other notorious part of the house. It is proper to have another person with you when you make a distress, to examine the inventory, and to be witnesses to the transaction, if called on for that purpose.

The time and manner in which the goods are to be removed and sold.

11. The safest way is to remove the goods immediately, and in the notice to acquaint the tenant where they are removed to; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are entitled to sell them by law, which is on the *seventh day*, because the statute says, you are to give *five days* notice, and it is held and understood to be *five whole days*, which must be *exclusive* of the day the distress was made.

Sed vide ante p. 92. pl. 11.

If the tenant requires time, the landlord must take his written authority to continue in possession.

12. If the tenant want further time to raise the money, and the landlord chuses to give him such indulgence, he must take a MEMORANDUM from the tenant, that possession is continued at his request, and by his desire, or the landlord will be a *trespasser* in continuing the same beyond the time limited by the statute, and liable to an action for so doing.

The manner of appraising and selling the goods, if not replevied on the sixth day.

13. On the *sixth day*, the sheriff's office should be searched to see if the goods are *replevied*; if not, go to the premises, and if the tenant be there, or any body on his behalf, demand the rent and charges of distress; if he do not pay the same, send for a constable and two sworn appraisers; let them see the goods taken in distress, and then the

the appraisers must be sworn by the constable, by laying their right hands on a bible having the *new testament* in it. The common way is for the appraisers to buy the goods at their own valuation; and a receipt at the bottom of the inventory, witnessed by the constable, is considered as a sufficient discharge; but if the goods taken in distress are of great value, let there be a proper *bargain and sale* between the landlord, the constable, the appraisers, and the purchaser, for the better proving of the transaction afterwards, if there should be occasion. The constable must administer to the appraisers the following oath:

14. You and either of you shall make a true appraisement of the goods now shewn to you, and mentioned and contained in this inventory, (*the constable having at the same time THE INVENTORY in his hand, and shewing the same*) according to the best of your judgment.

The appraisers' oath.

So help you God.

15. MEMORANDUM that on the day of , 1791, S. M. of, &c. and D. L. of, &c. two sworn appraisers, were sworn on the *Holy Evangelists* by me W. O. of, &c. constable, to make a true appraisement of the goods and chattels mentioned in this inventory, according to the best of their judgment. Witness my hand.

Memorandum of the appraisers being sworn.

W. O. Constable.

16. NOTE: After the appraisers are sworn and have viewed and valued the goods, indorse the following memorandum on the inventory for the appraisers to sign.

17. We the above-named S. M. and D. L. being sworn on the *Holy Evangelists* by W. O. constable above-named, to make a true appraisement of the goods mentioned in the above inventory, according to the best of our judgment, and having viewed the said goods, do adjudge and value the same at the sum of pounds and no more. As witnesses our hands this day of , 1791.

Memorandum to be indorsed on the inventory.

S. M.
D. L.

18. NOTE: After the goods are sold for the best price you can get for the same, you must deduct the arrears of rent and all reasonable charges; and the overplus (if any) must be paid or applied to the tenant's use.

H 3

Mr.

Precedents for making a Distress.

Mr. T. C.

The form of a notice from the tenant, where he requires a further time for the payment of the rent, &c.

19. I HEREBY desire you will keep possession of my goods which you have this day distrained for rent due from me to you, in the place where they now are, being in (*the premises where the distress was made, which must be described*) and I will pay the man for keeping the said possession. *As witness* my hand this day of , 1791.

A. B.

20. NOTE: If the sheriff is in possession of the goods of a tenant on an execution, the landlord need not make a distress, but should forthwith serve him with the following notice.

To J. W. }
 and } Esqrs. Sheriffs of *Middlesex*.
F. B. }

Notice to the sheriff when in possession on an execution.

21. TAKE NOTICE that there is now due from A. B. the person to whom the goods belong, you are now in possession of, by virtue of his majesty's writ of *fieri facias*, &c. returnable (*here mention the writ and return*) the sum of pounds, for one year's rent due at Michaelmas-day last. *As witness* my hand this day of , 1791.

F. G. Landlord of the said premises.

22. NOTE: The man in possession of the goods, &c. is to be paid two shillings and six-pence *per* day, if the tenant keep him; and three shillings and six-pence if he keep himself.

CHAPTER THE EIGHTH.

Replevin.

1. **R**EPLEVIN, from the Latin word *replegiare* which signifies to take back the pledge, is a proceeding grounded upon a *distress*; and consists in a re-deliverance of the goods or cattle distrained to the first possessor, on his giving good security to the sheriff or his officers to try the right of taking them in a suit at law and to re-deliver the things distrained if judgment be given against him.

2 Crompton's
Practice 224.
Co. Lit. 145.
3 Blac. Com.
13, 14, 147.

1. *For and against whom replevin lies.*
2. *For what things replevin lies.*
3. *The different kinds of replevin.*
4. *Out of what courts replevin issues.*
5. *Of the pledges in replevin.*
6. *Of writs and process in replevin.*
7. *Of the declaration and pleas in replevin.*
8. *Of the writ of enquiry.*
9. *Of costs in replevin.*

I. *For and against whom Replevin lies.*

2. The general rule is, that the plaintiff in *replevin* must have a general or a special property in the goods at the time of the taking, and therefore a lord for a *heriot*, or a parson for a *mortuary* shall not have it before the property have been vested in them by seizure. AN EXECUTOR may bring replevin for goods and chattels taken in the life-time of his testator. A HUSBAND alone or husband and wife jointly may bring replevin for cattle belonging to his wife, which were taken by distress previous to the coverture; for as this action admits and affirms the property to be in the wife at the time of the marriage, it of course is converted by the marriage into the exclusive property of the husband. But in replevying goods which a wife holds as executrix, this action cannot be brought by either of them singly, but they must be joined. Several persons whose respective properties are distrained cannot join in replevying them, but each must proceed for his own goods.

Plowd. 281.
Co. Lit. 145.

1 Sid. 82.

F. N. B. 69.

Vent. 261.

2 Lev. 107.

1 Sid. 172.

2 Stra. 1015.

4 Bac. Abr.

385.

5 Co. 19, 33.

II. *For what Things Replevin lies.*

3. REPLEVIN will lie for every species of chattel personal, which by its nature and in contemplation of law is capable

Co. Lit. 145.

F. N. B. 69.

Winch. 26.

of legal ownership, not only where the party distrained has a general property as every owner hath, but also where he has only a special property, as where a man hath goods in pledge, or where he hath the cattle of another, not absolutely, but for the purpose only of manuring his lands.

(a) *Sed quere*, for the general rule seems to be that replevin lies for any thing that may by law be distrained.

4. Replevin also, will lie for things wild by nature, if made tame or reclaimed, so long as they continue in that state, as for a *leveret*, or a *ferret*, or a *swarm of bees*; for they possess the *animus revertendi*, and though they rove at large, they return to the dominion of their owner; but animals though domesticated, as *dogs, bears, cats, apes, parrots*, and *singing birds* which are only kept for pleasure, curiosity, or whim, are not *replevisable*, though perhaps an action of *trespass* will lie for taking them. (a)

5. Replevin will not lie of trees or timber growing, nor of things annexed to the freehold, because such things cannot be distrained, but it will lie for a certain iron or other implement or utensil belonging to the party's mill.

F. N. B. 68.

Moor 394.

2 Brownl. 139.

6. Replevin will not lie for deeds or charters concerning lands, for they are only valuable by relation to the lands, nor will it lie for money, nor for leather made into shoes; nor for goods taken beyond the seas, and afterwards brought into *England*.

2 Stra. 1084.

7. Replevin will not lie for goods taken in execution or upon a *conviction*.

8. But in those cases where replevin will not lie, an action of *detinue* may be brought to recover *in specie* the deeds, goods, &c. wrongfully detained.

III. The different Kinds of Replevin.

3 Bl. Com.

247.

2 Inst. 139.

9. The party distrained upon had formerly no other mode of trying the right to the distress than by the old common law process of *replegiari facias* or writ of replevin; which issued out of chancery commanding the sheriff to deliver the distress to the owner, and afterwards to do justice in respect to the matter in dispute in his *COUNTY COURT*: But this being a tedious method of proceeding, the beasts or other goods were long detained from the owner to his great loss and damage.

10. To remedy this mischief it is directed by the 52 Hen. 3. c. 21. commonly called the statute of *Marlbridge*,
 “ That (without suing a writ out of the chancery) if the
 “ beasts of any person be taken and wrongfully withholden
 “ the sheriff after complaint made to him thereof may deliver them without let or gainfaying of him that took the
 “ beasts

“beasts if they were taken out of liberties; and if they
“were taken within liberties, and the bailiffs of the liberty
“will not deliver them, then the sheriff for default of
“those bailiffs shall cause them to be delivered.”

11. And for the greater ease of the parties it is further provided by the statute of the 1 *Philip & Mary, c. 12.* That the sheriff shall make, at least, four deputies in each county dwelling not above twelve miles from each other, for the sole purpose of making replevins, under a penalty of five pounds a month for every month such deputies are wanting.

12. When any man's goods therefore are distrained or impounded he may repair to one of these sheriffs deputies for the purpose, and may there have A REPLEVIN, (upon pledges given to return the distress) to cause the goods distrained to be delivered to the owner.

IV. Out of what Courts Replevin issues.

13. THE WRIT of replevin issuing, as we have already 2 Inst. 312. observed, out of the court of chancery, is only returnable into the courts of *King's Bench, Common Pleas*, the court of the *Cinque Ports*, and the *County Court*.

14. The sheriff upon *plaint* made to him without writ may either by *parol* or *precept* command his bailiff to deliver the goods, that is to make *replevin* of them, and by these words in the statute of *Marlbridge*, “After complaint made
“to him thereof,” he may take a *plaint* out of the *county court* and make *replevin* presently, which he is to enter in the court; for it would be inconvenient and against the scope of the statute, that the owner for whose benefit the statute was made should tarry for his beasts till the next *county court*, which is only holden from month to month. 2 Inst. 159.
Keb. 205.
Dalton Sheriff
230.
Buller's Nisi
Prius 52.

15. And by this statute the sheriff may hold plea in the county court on REPLEVIN by *plaint* of whatever value the subject in dispute may be, although in other actions he shall only hold plea where the matter is under *forty shillings* value, yet if the king be party or the taking be in right of the crown, or if any thing touching the *freehold* come in question, or *ancient demesne* be pleaded, or if the distrainer *claim property* in the goods and on a writ *de proprietate probanda*, they be found to be his, the sheriff can proceed no further, but must return the proceedings into the Court of King's Bench or Common Pleas to be there, if thought adviseable, finally determined. And indeed either party may by the writs

Finch 317.
3 Black. Com.
149.
Co. Lit. 145.
Brownl. 33.
2 Crompt. Prac.
227.

Bro. Replevin
3.
Brownl. 33.
1 Ld. Ray. 219.

Carthew 381.
Impey's Office
of Sheriff 209.

2 Inst. 140,
294.

3 Bl. Com.
147.
2 Inst. 340.
Hutton 77.
Dalt. Sh. 433.
Impey's Office
of Sheriff 208.
4 Bac. Abr.
376.
5 Com. Dig.
326.

writs of *pone* and *recordari facias* (a) remove a REPLEVIN to these superior courts: the plaintiff at pleasure; the defendant upon reasonable cause; so that it is usual to carry it up in the first instance to the courts in *Westminster Hall*.

16. Proceedings in replevin cannot be carried on in the hundred court, court baron, or any other court claiming a jurisdiction over such proceedings by prescription; and therefore a lord of a hundred cannot prescribe to grant replevins on plaint.

17. The sheriff is obliged to grant *replevins* in all such cases as are allowed of by law, and the officer who takes the goods by virtue of a replevin issuing for what cause soever, is not liable to an action of *trespass*, unless the party in whose possession the goods were, claim property in them: And in all cases of misbehaviour by the sheriff or other officers in relation to *replevins*, they are subject to the controul of the king's superior courts, and punishable by ATTACHMENT for such misbehaviour.

18. If the distress be made in a *franchise* or *bailiwick* the sheriff is to direct the replevin to the bailiff thereof to deliver the goods upon pledges, and if he make no answer or return that he will make no deliverance or the like, then the sheriff may enter into the liberty and make deliverances; and if the distress be taken without the liberty and impounded within the liberty then the sheriff may enter and make deliverance, and need not first make out a warrant to the sheriff of the liberty.

V. Of the Pledges in Replevin.

19. The sheriff, when upon complaint made to him he makes replevin, must take two kinds of pledges: FIRST, by the common law, that the party replevying will pursue his action against the distrainer, for which purpose he puts in *plegias de prosequendo*, or pledges to prosecute, and SECONDLY, by 13 *Edw. I. c. 1.* that if the right be determined against him, he will return the distress again; for which

(a) The *pone* is used when the proceedings are by writ of *replevin*—The *recordari facias* is a writ to record the proceedings, and when recorded to return the same into the king's bench or common pleas

as the case may be; and therefore where THE REPLEVIN is by *plaint* it can only be removed by writ of *recordari*—but if the replevin be in *plaint of record* it may be removed *certiorari*.—See post. sect. 6. p. 110.

purpose

purpose he is bound to find *plegi de retorno habendo*, or pledges to make return if return shall be adjudged.

20. The sufficiency of these pledges is discretionary, but if the sheriff return insufficient pledges he shall answer for the price of the goods himself, for insufficient pledges are no pledges in law. The pledges taken must not only be sufficient in estate, *viz.* capable to answer in value, but likewise sufficient in law and under no incapacity; and therefore infants, feme coverts, persons outlawed, &c. are not to be taken as pledges, nor are any persons politic or bodies corporate. The pledges also must be recorded in the county-court.

50 Co. 102.
2 Inst. 340.
Co. Lit. 145.
2 Inst. 340.
Barnes 3.

21. By the statute *Westminster* an action will lie against the sheriff if he omit to take pledges, as if he take such as are insufficient (a); although the party where the suit is in a court of record may have a *scire facias* against the pledges, and where it is in the county court, a *precept* in the nature of a *scire facias*, for he has an *interest* in the pledges, of which he would be deprived by the omission to take pledges or taking such as are insufficient.

Salk. 99.
Ld. Ray. 278.
Comb. 1.
Comyns 593.

22. The high sheriff, the under-sheriff, and the replevin clerk are all answerable to the defendant in replevin for the sufficiency of the pledges *de retorno habendo*; and therefore the bail in replevin cannot be excepted against in order to compel a justification.

2 Black. Rep. 1220.

23. By 11 Geo. 2. c. 19. For the greater security of persons distraining *for rent*, it is enacted, "That sheriffs and other officers having authority to grant REPLEVINS shall in every replevin of a *distress for rent* take in their own names from the plaintiff and two sureties A BOND in double the value of the goods distrained, such value to be ascertained by the oath of one or more witnesses not interested, (which oath the person granting such replevin is to administer) and conditioned *for* prosecuting the suit with effect and without delay, and for returning the goods in case a return shall be awarded before any deliverance to be made of the distress; AND such sheriff or officer taking such bond, shall at the request and costs of the AVOWANT or person making CONUSANCE assign such bond to the avowant, &c. by indorsing the same, and

On a *distress for rent* of the tenant replevy the sheriff shall take a *replevin bond*.

(a) Some evidence must be given by the plaintiff of the insufficiency of the pledges, but very slight evidence is sufficient to throw the proof on the sheriff, for the sureties are

known to him, and he is to take care they are sufficient. *Saunders v. Darling* at Nisi Prius after Trinity Term 10 Geo. 3.

" attesting

"attesting it under his hand and seal in the presence of
 "two witnesses; which may be done without any *stamp*,
 "provided the assignment be stamped before any action
 "brought thereon; AND IF the bond be forfeited the
 "avowant, &c. may bring an action thereupon in his own
 "name; AND THE COURT may by rule give such relief to
 "the parties upon such bond, as shall be agreeable to jus-
 "tice, and such rule shall have the effect of a defea-
 "sance."

1 Ld. Ray.
278.

24. In replevin a *bond*, instead of *pledges*, taken by a sheriff, to prosecute the action with effect for wrongfully taking his gelding, and to make return thereof if return should be adjudged, is good; but he cannot take *gage* instead of *pledges*.

The King v.
Lewis. Trinity
28 Geo. 3.
2 Term Rep.
607.

25. If the sheriff neglect to take a replevin-bond the party injured may maintain an action; but the court will not grant an attachment against him for a contempt.

5 Com. Dig.
436.

26. If upon a replevin-bond being taken the party in replevin do not enter his plaint in the county-court, the bond will be forfeited, or if afterward he do not proceed; but if the plaintiff enter his plaint and afterward is restrained by an injunction out of Chancery until his death whereby the plaint abates, the bond will not be forfeited.

Carth. 519.

VI. *The Writs and Process in Replevin.*

Impey's Office
of Sheriff 209.

(a) That he
may make re-
plevin by parol,
See 2 Inst. 139.
F. N. B. 69.

5 Com. Dig.
324.
See the form of
the precept,
post p.

The statute of
Westminster the
first 3 Edw. 1.
c. 17. See also
the Year Book.
8 Hen. 4. pl.
19. and 5 Com.
Dig. 324.

Finch 316.
Dalt. 274.

27. THE ORIGINAL WRIT in replevin issues out of chancery, and is returnable in the nature of a JUSTICES to empower the sheriff to hold plea in his county court, where a day is given to the parties; but when the party proceeds by *plaint* THE SHERIFF on receiving the *pledges* or *securities* before described, is immediately to make his PRECEPT (a) directed to his officers commanding them to *replevy* and cause to be delivered the cattle, goods and chattels so taken into the possession of the party so distrained upon.

28. If the distress be conveyed into any house, park, castle, or other place of strength, and the party who distrains refuse to deliver them to be replevied, the sheriff may take the POSSE COMMITATUS and, on *request* and *refusal*, may break open the same and make deliverance.

29. But if the defendant in replevin claim a property in them; the party replevying must sue out a writ DE PROPRIETATE PROBANDA in which the sheriff is to try by an inquest in whom the property previous to the distress subsisted:

ed : and the sheriff must give notice of the time and place of executing this writ.

30. If the distress be carried out of the county or concealed, the sheriff may return that the beasts, goods and chattels are carried to a distance to places to him unknown or *eloigned*, and thereupon the party replevying shall have a writ of *CAPIAS IN WITHERNAM* or in *VETITO NAMIO* (a) in order to obtain a second or reciprocal distress in lieu of the first which was *eloigned*. This writ is a command to the sheriff to take other goods of the distrainer in lieu of the distress formerly taken and *eloigned*, or withheld from the owner. So that here is now *distress* against *distress*; one being taken to answer the other by way of reprisal and as a punishment for the illegal behaviour of the original distrainer: For which reason goods taken under a *WRIT OF WITHERNAM* cannot be replevied until the original distress is forthcoming.

31. A replevin granted, of the person who takes the distress avows or if his bailiff make *CONUSANCE* and prove the distress to be lawfully taken, or if upon removal of the plaint into the courts above, the plaintiff whose cattle were replevied make default or do not declare or prosecute his action and thereby becomes nonsuited, or if a verdict be given against him, then the party distraining or defendant in replevin shall have a writ *DE RETORNO HABENDO*; which is a *judicial writ* and not a *returnable process*, and therefore if on the *pluries* the sheriff return that the cattle, goods or chattels are *eloigned* he shall have a *scire facias* against the pledges (b) and if they have nothing (c) then he shall have a *WITHERNAM* against the plaintiff's own cattle.

32. If the plaintiff be nonsuited in replevin, and his cattle are afterwards taken again for the same cause he may have a writ of *SECOND DELIVERANCE* for his cattle or goods, whether the nonsuit be after or before avowry—This is a *judicial* and not an *original* writ; it issues out of the record upon which the nonsuit was had; and must be conformable to it—this writ is not taken away by the statute of 11 Geo. 2. c. 19. neither is it a *superfedeas* to a *WRIT OF INQUIRY* of damages; but after serving this writ the defendant cannot proceed on the *RETORNO HABENDO*.

33. By 13 Edw. 1. c. 2. If the party replevying again make default, or if for any other cause, a *return of the distress*, now twice replevied, be awarded, the distress shall remain *irreplevisable*.

F. N. B. 73.
Dalton's Sheriff 276.
4 Bac. Abr. 380.
5 Com. Dig. 323.
(a) Year Book 9 Edw. 4. pl. 48.
11 Hen. 4. pl. 15.
Fitzherbert's Natura Brevium 69, 70.
Ray. 475.

The Year Book 36 Hen. 6. pl. 40.
Dyer 280.
Co. Lit. 145.
Coke's Entries 59.
2 Roll. Abr. 433.
F. N. B. 172.
Sed vide Saunders v. Fortescue. Hilary 23 Geo. 2.
1 Will. 256.
(b) By 13 Edw. 1. c. 1.
(c) See Salk. 581.
5 Com. Dig. 323.
F. N. B. 72.
See the stat. West. 2.
13 Edw. 1. c. 2.
2 Inst. 341.
2 Roll. Rep. 97.
Barnes Notes 437.

2 Espinass 55.

Replevin.

34. As replevin is *vicontiel* and determinable in the inferior court where the suitors are judges both of the law and the fact, the law has appointed *two writs* to remove such causes out of inferior courts to the superior, viz. the writ of PONE and RECORDARI.

The writ of
Pone.

35. The WRIT OF PONE is used when the proceedings are by writ of *replevin*, for that writ gives the superior court authority to proceed in such suit or plaint, whether the proceedings below are recorded or not, as the superior court wants no record from below, when they have the king's writ with them.

The Recordari.

36. The WRIT OF RECORDARI is a writ to record the proceedings, and when recorded to return the same into the king's bench or common pleas, as the case may be; it gives inferior courts authority to record proceedings that were not of record before, and if the replevin was by plaint it must be removed by writ of *recordari*, because the court must have their authority by proceeding returned to them of record.—NOTE: If the defendant be without *addition* in the *plaint* he can have none in the *recordari* yet he may be *outlawed*.

See the stat.
1 Hen. 5: c. 5.

3 Bl. Com.
149.
Ante 106.

37. A plaintiff in replevin may remove his writ of replevin or plaint out of an inferior court, either by *pone* or *recordari*, without shewing any cause for such removal, as it is an act in his own delay; but a defendant in replevin, cannot without shewing a sufficient cause, which must appear upon record.

38. There are several causes of removal at common law and (when removed) the cause is inserted in the writ after the *teste* thereof.

39. If the plaint be removed by defendant by PONE at the *day in bank*, the plaintiff shall be demanded under peril of a nonsuit, and if he make default, a return is to be awarded to the said writ, but no process against him; if the plaintiff appear and the defendant makes default, a writ of *disfringas* shall issue against him, and on the same being returned, "*nulla bona*," then a *capias* and *process* of outlawry; if the plaint be removed by the plaintiff by PONE or RECORDARI, if he make default, then shall issue against him a *pone per vadios*, and, a process of outlawry. These writs issue out of chancery, and are made out by the proper curitor of the county, on leaving with him a *præcipe* for that purpose.

40. If

Replevin.

111

40. If the plaintiff in replevin have judgment on a verdict, the jury assesses the damages as in a common action; if on a demurrer, he must sign an interlocutory judgment and execute A WRIT OF INQUIRY (a) before he can sign final judgment or take out execution.

The writ of enquiry.

(a) See the 19 Car. 2. c. post.

41. If the avowant or defendant have judgment on a verdict, damages are assessed as aforesaid: if on a demurrer, or on *non pros* an inquiry must be granted to obtain such judgment.

42. If in replevin the plaintiff is nonsuited he cannot have a new replevin, but must be relieved by the WRIT OF SECOND DELIVERANCE.

Writ of second deliverance.

43. If the plaintiff do not prevail in this writ, the writ of *retorno habendo* is awarded for the avowant irrepleviable, that is, that the avowant shall detain and keep the thing taken till the rent or other duty for which they were taken is paid, nor shall the plaintiff ever again disturb the defendant's possession by replevin or writ of second deliverance, although if the plaintiff tender the rent, the defendant must restore the goods, &c. or the plaintiff may recover the same by an action of *detinue*.

Writ of *retorno habendo*, irrepleviable.

44. The writ of second deliverance is a *superfedeas* in law to the sheriff against the writ of *retorno habendo*, and to prevent his executing the same; if it come to him after the return is made, it is in the nature of a *new replevin*.

45. If the defendant in replevin cannot get the goods, &c. of the plaintiff on the WRIT OF RETORNO HABENDO, and the sheriff returns the same, "*elongata*," the defendant must sue out a *scire facias* to summon the bail, which brings them into court to shew cause why the defendant should not have a return of their goods, &c. and if no cause be shewn by them he has a writ to have return of their goods, &c. instead of the plaintiff; and if their goods, &c. prove sufficient and the sheriff returns a *nihil* on this, the defendant may have a *scire facias* against the goods, &c. of the sheriff.

The writ of *scire facias*.

46. The defendant has another remedy against the plaintiff where the sheriff returns "*elongata*," on the writ DE RETORNO HABENDO, viz. a *capias in withernam* against plaintiff's goods, &c.

Withernam.

47. THE WRIT OF RECAPTION lies, where the defendant distrains again on the plaintiff for the same rent, and if he is convicted thereof, he shall be fined to the king.

Recaption.

48. On the writ of recaption the defendant cannot avow as in replevin, because an avowry is to have a return of the pledges; but the defendant must justify as in *trespass*, and unless he can support such second taking, he will be deemed a trespasser.

49. On the WRIT OF RECAPTION, the tenant in his declaration must aver, that the *second distress* was taken for the same cause as the first, or he fails in making out his title to the said writ, and consequently cannot punish the landlord for such second distress.

VII. Of the Declaration and Pleas in Replevin.

50. IN REPLEVIN he whose goods are distrained and impounded becomes the plaintiff and declares against the other for unjustly taking and detaining his goods or chattels.

F. N. B. 69.
5 Com. Dig.
327.
See the form of
the declaration
post p.

Co. Lit. 145.
3 Hen. 4. pl.
16.
Strange 1015.
B. R. H. 119.

1 Sid. 9.
Barnes 353.
Cro. Eliz. 896.
Moor 678.
Ray. 34.
Hob. 16.
2 Will. 354.

Stra. 1015.

Gillb. 147.

James v. Moody
Trio. 29 Geo.
3. 1 Term
Rep. C. B.
281.

51. The DECLARATION in replevin may be laid in the county where the cattle or goods were taken, or in the county into which they are drove after the taking, or in both; it must be several as to every one who has a several property, for two persons who have not a joint interest cannot join in replevin. It ought to mention *the place* in which the taking was, and although the taking need not be laid where the taking originally was, but in any other place where the cattle were in the defendant's custody, yet if no place be mentioned, or if there be a *blank* left for the place the defendant may demur: So, it ought to mention *the vill* in which the place is, and if there were several takings in different places it must mention how many, describing the several species of goods that were taken in each place; if however, it describe the goods with such sufficient certainty that the sheriff can make deliverance, it is enough.

52. On a cause being removed out of the county court the plaintiff must declare *de novo*.

53. The plaintiff in replevin may declare without a rule from the defendant to force him to do so; and if the defendant do not appear, the way to compel his appearance, is by attachment.

54. The plaint in replevin being removed into the court of common pleas by *recordari facias loquelam*, technically called a *re. fa. lo*; and the defendant having given a rule to declare, he may sign judgment of *non pros* for want of declaring, without demanding a declaration.

55. PLEAS

55. PLEAS IN REPLEVIN, are generally of four kinds, viz. either 1st. in abatement. 2d. Pleas in bar. 3dly. In justification. 4thly. By way of consufance. 5thly. By way of avowry. 6thly. The general issue. 7thly. The plaintiff's plea in bar.

56. ABATEMENT —The defendant in replevin may plead in abatement that the goods were taken in another county; or that the property is in him; or part of it is in him; or in a stranger; or in the plaintiff and a stranger, and not in the plaintiff: So also the defendant may plead *bailment* to him by the plaintiff; for which *detinue* lies, but not *replevin*. of Cro. Eliz. 475. See the manner of concluding a plea in abatement. 2

57. BAR. The defendant in replevin may plead in bar the general issue *non cepit*, either to the whole or to part; but he cannot plead *non cepit infra sex annos*, for this does not answer the detainer. So the defendant may plead, "property," in bar as well as in *abatement* (a); and, if upon the evidence he prove property in a less number of cattle than he pleads for it is sufficient: so, also he may plead "a release" in bar: or he may plead to the *jurisdiction*.—So, also he may plead the statute of limitation; for by 21 Jac. 1. c. 16. the action of replevin must be brought within *six years* after the cause of action accrued.

58. JUSTIFICATION. The defendant, in replevin, may plead a plea in *justification*, without making either *avowry* or *consufance*; but if he justify, he cannot have a return of the thing taken: But, if the defendant had lawful cause for the taking, the most proper and usual case is to make *avowry* or *consufance*.

59. AVOWRY is in the nature of a bar, and imports a *justification* of taking in his own right, or in right of his wife; or, as it is otherwise described, it is the setting forth, as in a declaration, the nature and merits of the defendant's case, and the shewing that the distress taken by himself was lawful. Thus, if a landlord distrain for rent in arrear, and the tenant or owner of the cattle bring a replevin, and the defendant declare against him for unjustly taking and detaining his cattle, and the defendant *justifies*, that he took them in his own right, and so shews the cause of his taking in his plea; this is an AVOWRY; which must contain sufficient certainty to intitle the avowant to a *retorno habendo*.

60. The most usual avowry is upon a distress made for *rent* and *services*, in which the defendant must alledge, in

I

certain,

4 Bac. Abr. 388.

5 Com. Dig. 329.

Barnes 353.

Ashton 475.

Coke's Ent. 314.

Clift's Ent. 654.

Co. Lit. 145.

Leach's edition

2 Ld. Ray. 1020.

1 Bro. Ent. 312.

2 Mod. 199.

Lutw. 1131.

4 Mod. 183.

Salk. 581.

1 Sid. 81.

Show. 401.

1 Salk 94.

(a) Sed quere

vide 2 Ld.

Ray. 984.

5 Com. Dig.

330.

3 Lev. 205.

1 Roll. Abr. 319.

Cro. Jac. 436.

1 Roll. Abr. 314.

320.

5 Com. Dig.

330.

Danvers 510.

2 Co. 25.

9 Co. 20.

8 Co. 69.

Vent. 99.

Cro. Jac. 160.

Dyer 280.

Co. Lit. 268.

See 21 Hen. 8.

c. 19.

Mod. Ca. 103.

2 Saund. 195.

1 Salk. 93.

Strange 507.

3 Lev. 142.

Winch's En-

tries 823.

(a) But this is now unnecessary by 11 Geo. 2. c. 19. vide *infra*.

6 Co. 59.
Co. Lit. 268.
9 Co. 36.
4 Co. 9.

(b) See 32 Hen. 8. c. 2.
2 Saund. 300.
Strange. 796.
1 Roll. Abr. 314.

Mich. 9 W. 3.
Richards v.
Cornesford, in
B. R. Comyn's
Rep. 42. pl. 26.
Ld. Raym. 255.

Comyn's Rep.
247. pl. 137.

See Buller's Nisi
Prius 56.

5 Com. Dig. 331.
3 Bl. Com. 147.

certain, what lands are held in right of his wife or of his LORD, and by what tenure; as for rent, homage, fealty, suit of court, heriot service, &c. (a) And he must alledge *seisin*, by the hands of some certain person who has the freehold at least; but a *seisin*, in law, is sufficient, and it need not be alledged within fifty years. (b) If the avowry be for rent upon a reservation, he must shew that he, or that such a person from whence the reversion descended or was assigned, was *seised* and made a lease to the plaintiff at years or at will; for if he only say that *A. having title*, demised to him, and he to the plaintiff, it will be bad; for he should shew the commencement of the *particular estate*. (c) But he need not shew *seisin of the rent*, where he avows upon a reversion; for it is sufficient that he has the reversion.

61. In replevin for cattle taken 26th September, the defendant avowed the taking as a distress for rent reserved on a lease for years, which was made under the title of *Christopher*, late duke of *Albemarle*, and for the rent of two years and an half, ending at *Michaelmas*, 29th September, &c. he avowed: It was assigned for error, that the distress was made before *Michaelmas* when the rent was in arrear: THE COURT, without difficulty, reversed the judgment; for the avowry is for one *intire rent* of two years; but before judgment the avowant might have *abated* his own avowry for the *half year*, and prayed judgment for the residue, and this would have been good.

62. When the plaintiff in replevin makes *conusance* and avows that the property is in himself, it seems to be sufficient without a traverse.

63. By 32 Hen. 8. c. 37. The executors and administrators of tenants in fee, fee-tail, or for life, or rent services, and indeed to all *tenants for life*, may *distrain* upon the land chargeable, so long as they remain in possession of the tenant, who ought to have paid; and may make *avowry* or *conusance*, in case such *distress* be *replevied*: But this act does not extend to rents issuing out of copyholds.

64. CONUSANCE imports a justification of the taking in right of another, as his bailiff or servant; that is, the de-

(c) The general rule of pleading is, that where a title is made under a *particular estate*, the commencement of that estate must be shewn;

but that an estate *in fee* may be alledged generally, 4 Bac. Abr. 395. But see 11 Geo. 2. c. 19. post.

endant,

feudant, in replevin, acknowledges the taking, but insists, that such taking was legal, as he acted by the command of one who had a right to distrain; and, therefore, one defendant may *avow*, and the other make *conusance* in his right; but if the defendant make *conusance* as bailiff or servant, he need not shew his authority.

Yelv. 103.

4 Mod. 378.

65. But great difficulties having often arisen in making avowries and *conusance* upon distresses for rent, quit rents, reliefs, heriots, and other tenures; IT IS ENACTED by 11 Geo. 2. c. 19. "that it shall and may be lawful to and for all defendants in replevin to make *conusance* generally, that the plaintiff in replevin, or other tenant of the lands, and tenements whereon such distress was made or enjoyed, the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for was incurred, which rent was then and still remains due, or that the place where the distress was taken, was parcel of such certain tenements held of such honor, lordship, or manor, for which tenement, the rent, relief, heriot, or other service distrained for, was, at the time of such distress, and still remains, due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors, owner or owners of such manor; any law or usage to the contrary notwithstanding; and, if the plaintiff or plaintiffs in such action, shall become nonsuit, discontinue his, her, or their action, or have judgment given against him, her, or them, the defendant, in such replevin, shall recover double costs of suit."

LANDLORDS may *avow* or make *conusance*, GENERALLY in replevin on a distress for rent, &c.

66. In an avowry and *conusance* to a declaration in replevin for rent of land due under a *parol demise*, the plaintiff, in replevin, pleaded an issue to the country; and also, by leave of the court, a plea in bar, "that at the time when the defendant is supposed to have made the demise in the avowry mentioned, he had not any estate in the land whereby he could make such demise; and the question was, whether this was a good plea under the 11 Geo. 2. c. 19. It was argued twice before the judges of the common pleas, and they were unanimously of opinion, that it is a *bad plea*, for that THE STATUTE being made for the advantage of landlords, and to prevent tenants putting them to difficulties in recovering their rents, the tenant is thereby *stopped* to call upon the landlord to shew his title in reply.

Sullivan v. Stradling, Hilary Term 4 Geo. 3. in Common Pleas. 2 Will. 208 to 219.

Dougl. 283.

67. Since the statute 4 Ann. c. 16. *attornment* need not be averred in a declaration on a covenant or in an *avowry* in replevin for rent.

1 Term. Rep.
in C. B. 24.

68. The plaintiff in *replevin* may pay the *rent* into court for which the defendant avows.

Gilbert's Replevin 174.

69. THE GENERAL ISSUE in *replevin* is *non cepit*, but the caption and detention only is in issue by this plea, and not the property.

5 Com. Dig. 335.
9 Co. 34.
Co. Jac. 127.

70. THE PLAINTIFF IN BAR of the *avowry* may *disclaim*, or confess the *avowry*, or plead "*out of his fee*," or "*non-tenure*" generally; or he may confess the tenure in part, and traverse the tenure *modo et forma*; and if it be found for the plaintiff, he shall have judgment; though the *avowry* was for *rent*, the tenure by which was confessed. So since the 32 Hen. 8. c. 2. he may plead never seised within fifty years.

Lutw. 1212.

9 Co. 36.
Cro. Eliz. 799.

3 Co. 64.

Barnes 450.

71. On an *avowry* for rent, and issue thereon, the plaintiff cannot give evidence to set off a mutual debt; but by way of special plea to the *avowry*, he may plead that the defendant is indebted to him in a greater amount than the rent; and indeed he may plead all pleas allowed by the common law, except *disclaimer*.

Co. Lit. 268.

2 Saund. 312.
5 Com. Dig. 335.

72. So also he may plead in bar to the *avowry* "*non demisit*"—"nothing in arrear," &c.—but he cannot, as we have already stated, plead *nihil tenementis*. (a) So also the plaintiff may say, that it is his freehold, or the freehold of A. and that by his licence he put his cattle there.

(a) Ante pl. 66.

3 Wils. 295.

73. In replevin for taking his cattle in the road, the defendant avowed the taking for *damage feasant*, in a certain place containing five acres, and that he drove them along the road to impound them. The plaintiff pleaded in bar, that the road is not parcel of the five acres; but, upon demurrer, the *avowry* was held good, and the plea in bar ill.

Nichols v. Newman, Easter,

3 Geo. 2.

Fortescue 209.

301.

Lutwidge v.

Jameson, Mich.

4 Geo. 2. C. B.

Fort. 210.

Vaughan v.

Norris, Trinity,

8 Geo. 2. B. R.

H. 137.

74. In debt in a replevin bond, it is a bad plea that the defendant appeared at the county court, for he must follow it, wherever removed, to the end of the cause. So also it is a bad plea to an action on such a bond, to say that he had performed all conditions; for he should plead that he did indemnify.

75. If an action of debt be brought on a replevin bond, for not prosecuting in the county court with effect, and the defendant plead, that he did then and there prosecute with

with effect, the plaintiff may reply, that *he* removed it by *recordari* into the common pleas.

VIII. *Of the Writ of Enquiry.*

1. By 21 Hen. 8. c. 19. every avowant, or other person that makes avowry or conuſance, or juſtifies as bailiff in replevin or ſecond deliverance for *rents*, customs, ſervices, or *damage feaſant*, if the plaintiffs be bound, ſhall recover damages and *coſts*. See Cro. Eliz. 257. 300. 329.

2. By 17 Car. 2. c. 7. "Whereſoever any plaintiff in replevin ſhall be non-ſuit, before iſſue joined in any ſuit in replevin by *plaint*, a writ lawfully returned, removed, or depending in any of the king's courts at *Weſtminſter*, the defendant making a ſuggeſtion in nature of an *avowry* or *cognizance* for *rent*, to aſcertain the court the cauſe of the diſtreſs; the court, upon his prayer, ſhall award a writ to the ſheriff of the county where the diſtreſs was taken, to enquire, by the oaths of twelve good and lawful men of his bailiwick, touching the ſum in arrear at the time of ſuch diſtreſs taken, and the value of the goods and cattle diſtrained: AND thereupon notice of *fifteen days* ſhall be given to the plaintiff or his attorney, in court, of the ſitting of ſuch enquiry; AND THEREUPON the ſheriff ſhall enquire of the truth of the matter contained in ſuch writ, by the oaths of twelve good and lawful men of his country; (a) AND UPON the return of ſuch inquiſition, the defendant ſhall have judgment to recover againſt the plaintiff the damages of ſuch rent, *in caſe* the goods or cattle diſtrained ſhall amount unto that value; AND IN CASE they ſhall not amount to that value, then ſo much of the value of the ſaid goods and cattle, ſo diſtrained, ſhall amount unto, TOGETHER with his *full coſts* of ſuit, and ſhall have execution, by *feri facias*, or *elegit*, or otherwiſe, as the law requires; AND IN CASE ſuch plaintiff ſhall be nonſuit after cognizance or avowry made, and iſſue joined, or if the verdict ſhall be given againſt ſuch plaintiff; then the jurors impannelled to try the cauſe, ſhall, at the prayer of the defendant, inquire concerning the ſum of the arrears, and the value of the goods or cattle ſo diſtrained; and thereupon the avowant, or he that makes cognizance, ſhall have judgment for ſuch arrears, or ſo much thereof, as the goods and cattle

If the plaintiff in replevin be nonſuited before iſſue joined, the defendant, on a ſuggeſtion in nature of *avowry* or *cognizance*, ſhall have a WRIT OF INQUIRY.

(a) The whole fact is to be proved, and may be litigated on the writ of inquiry. Bull. N. P. 5th Edit. 58.

1 Lev. 255.
1 Vent. 40.

"cattle so distrained amount unto, together with his full costs, &c."

3. "And if judgment, in any of the courts aforesaid, be given upon demurrer for the avowant, or him that maketh cognizance for any rent, the court shall, at the prayer of the defendant, award a writ to enquire of the value of such distress; and upon the return thereof, judgment shall be given for the avowant, or him that makes cognizance, as aforesaid, for the arrear alledged to be behind in such avowry or cognizance, if the goods or cattle so distrained shall amount to that value, and in case they shall not amount to that value, then for so much as the said goods or cattle so distrained amount unto, together with his full costs of suit, and shall have like execution as aforesaid."

4. If the plaintiff be nonsuited for want of a plea in bar to the avowry, the avowant may either execute a writ of enquiry of damages, or sue upon the replevin bond.

5. On a nonsuit, in replevin, for want of a declaration, the avowant may execute a writ of enquiry of damages, after a writ of second deliverance.

6. If the jury, at the trial, omit to assess the avowant his damages, a writ of enquiry shall issue.

7. In replevin of a distress taken for a poors rate, a writ of enquiry may be executed on a defective verdict; (a) but, it is doubtful, if such a writ can be executed on a defective verdict in replevin on a distress for rent. (b)

IX. Of Costs in Replevin.

Sayer's Laws of
Costs 4. 103.

1. DAMAGES being recoverable at the common law, in an action of *replevin*, or in an action of *second deliverance*, or PLAINTIFF in either of these actions, may recover costs, under the statute of *Gloucester*, which after enumerating the several cases, in which a *demandant* shall recover costs, says, that the act shall hold, in all cases, where a man recovers damages.

2 Com. Dig. 548.

2. By 7 Hen. 8. c. 4. "Every avowant, and every other person that makes avowry or cognizance or justifies, as bailiff to any person, in a replegiare or second deliverance, for any rent, custom, or service, if his avowry, cognizance, or justification be found for him, or the plaintiff be otherwise barred, shall recover his damages
"and

Waterman v.
Yea. 2 Will. 41.
2 Espinasse's
Digest 51.

Cooper v. Shal-
rook.

2 Will. 116.

Latch. 72.

3 Will. 462.

(a) Duvell v.
Marshall.

2 Black. Rep.
921.

(b) Freeman v.

Lady Archer,

2 Black. Rep.

763.

But see 2 Espi-
nasse's Nisi

Prius 53.

"and costs that he has sustained, as the plaintiff should have done if he had recovered."

3. By 21 *Hen. 8. c. 19.* "Every avowant, and every person that makes any avowry, justification, or cognisance, as bailiff or servant to any person in any replegiare, or second deliverance for rent, custom, service, or for damage feasant, or other rent, upon any distress taken in any lands or tenements, if the avowry, justification, or cognisance be found for him, or the plaintiff be nonsuit or otherwise barred, that then he shall recover his damages and costs against the plaintiff, as the plaintiff should have done if he had recovered."

1 Jones 135.
Cro. Jac. 473.
Bull. N. P. 57.

4. An executor or administrator, who *avow* in right of their testator or intestate, under the 32 *Hen. 8. c. 37.* are entitled to costs.

Fanel v.
Hughlev.
2 Roll. Rep. 437.

5. By 17 *Car. 2. c. 7. s. 2.* the sheriff is empowered to execute a writ of enquiry, whensoever the plaintiff in replevin for rent shall be nonsuit in the superior courts, and to give the avowant, or he that makes cognisance, judgment for the arrears or value of the goods distrained, together with his full costs of suit.

Bull. N. P. 58.

6. By 11 *Geo. 2. c. 19. s. 22.* the defendant, in replevin for rent, is allowed to avow or make consuance generally, without specially alledging the title under which the distress was made; and if the plaintiff shall, in such action, become nonsuit, discontinue his action, or have judgment given against him, the defendant shall recover double costs of suit.

Bull. N. P. 60.

7. If a defendant plead in abatement, in replevin, and have judgment on that plea, he shall not have costs; for neither the 7 *Hen. 8. c. 4.* nor the 21 *Hen. 8. c. 19.* extends to this case.

Comyn's 122.

8. An avowant, who in an action of replevin, has pleaded properly in the thing distrained, cannot recover costs.

Hard. 153.

9. A defendant, in replevin, who avows for an amer-
ciament in a court leet, or for taking an estray, is intitled to costs.

Cro. Eliz. 300.
330
Cro. Jac. 520.

10. A defendant, in replevin, who avows the taking on a *heriot custom*, is not, on the plaintiff being nonsuited, entitled to costs under 11 *Geo. 2. c. 19.* for though a distress may be made for a *heriot service*, it cannot for a *heriot custom*.

Lloyd v. Winten
2 Barne's Sup.
16. Sayer's
Costs 107.

Barne's 146.

Stone v. Forsyth,
Trinity, 22 Geo.
3. Dougl. 709.
note (2.)

Davis v. Jones,
1 Term Rep.
372.

Dodd v. Jod-
drell, 2 Term
Rep. 235.

Ingle v. Wad-
worth and
others.
3 Burr. 1284.

Rees v. Morgan,
in error, Trinity
29 Geo. 3.
3 Term Rep.
349.

Jones v. Con-
cana, 3 Term
Rep. 661.
2 Black. Rep.
375.

11. If some issues be found for an avowant, and some against him; the costs for one shall be deducted out of the other. So also an avowant shall pay costs on the *special avowries* being found against him; and shall not have costs on the affirmance of a judgment, in his favour, on a writ of error.

12. In all cases, when a cause is removed into the king's bench, from an inferior court, by a *recordari facias loquelam*, and the plaintiff does not prosecute his suit, the defendant is intitled to sign judgment, and to have his costs by the statute 4 Jac. c. 3.

13. Where some issues, in *replevin*, are found for the plaintiff, which intitle him to judgment, and some for the defendant; the defendant must be allowed the costs of the issues found for him, out of the general costs of the verdict, unless the judge certify that the plaintiff had probable cause for pleading the matters on which these issues are joined.

14. In an action of *replevin* against several defendants, all of whom *avowed* under a right of common, except one who pleaded a *non cepit*, and he was acquitted; and there being no certificate, that there was reasonable cause for making him a defendant; it was contended, that he was intitled to costs, under the 8 & 9 Will. 3. c. 11. s. 1. but the court said, that all statutes respecting costs, must be construed strictly; and that it was impossible to consider a *replevin*, either as an action or a plaint within this statute, which only speaks *generally* of actions of *trespasses*.

15. When the defendant, in *replevin*, made cognisance for rent in arrear, and the jury found a verdict for him, and damages, to the amount of the rent claimed in his cognisance, without finding either the *amount of the rent in arrear*, or the *value of the cattle* distrained, and judgment was entered for the damages assessed; the court permitted the defendant to amend his judgment, and to enter a judgment *pro retorno habendo*.

16. The court will not give judgment, as in case of a nonsuit in *replevin*, under the statute of 14 Geo. 2. c. 17. for, in *replevin*, both *plaintiff* and *defendant* are actors, and may give notice of trial, and carry down the cause for trial.

X. PRECEDENTS IN REPLEVIN.

1. KNOW ALL MEN by these presents, that WE C. D. of, &c. in the county of esq; E. P. of the same place and county, gent. and G. H. of, &c. in the same county, grocer, are held and firmly bound to J. K. esq; sheriff of the county aforesaid, in the sum of pounds of lawful money of *Great Britain*, to be paid by the said J. K. or his certain attorney, executors, administrators or assigns; for which payment to be well and truly made, we bind ourselves, and each of us binds himself for the whole and in gross, our heirs, executors and administrators, firmly by these presents, SEALED with our seals, DATED this day day of , 1791, and in the *thirty-first* year of the reign of our sovereign lord *George the Third*, by the grace of God of *Great Britain, France, and Ireland, King, Defender of the Faith, and so forth.*

The form of the replevin-bond by stat. 11 Geo.

2. This bond must be on stamps, amounting to six shillings. See ante fol. 54, in margin.

Now the condition of this obligation is such, that if the above bounden C. D. shall and do appear at the next county-court, to be holden for the county of , at the town of , on the day of next, and there prosecute with effect his suit, which he has commenced against J. W. for the taking and unjustly detaining *four cows*, (or as the case may be) the goods of him the said C. and to make return of the said goods, if a return of the same shall be adjudged; that then this present obligation shall be void and of none effect, or else to remain and be in full force and virtue. SEALED, &c.

NOTE: If the tenant in consequence of having entered into the said bond does not prosecute his suit with effect, the landlord may, on application to the sheriff of the county or city where such distress is made, in four days, exclusive of the time limited in such bond for the tenant to prosecute his action in replevin, have an assignment thereof, and proceed thereon against the tenant and his sureties in the same manner that the law allows a plaintiff, to proceed against a defendant and his bail on a common bail-bond.

2. KNOW ALL MEN by these presents, that I J. K. esq; sheriff of the county of , have, at the request of the above-

The form of an assignment of a replevin-bond

from the sheriff. above-named *J. W.* the avowant in this cause, assigned over unto him the said *J. W.* this replevin-bond, pursuant to the act of parliament in that case made and provided. IN WITNESS whereof, I have hereunto set my hand and seal of office this day of , in the year

J. K.

Sealed and delivered [being first duly }
stamped] in the presence of }

K. B. Trinity-term, 31 Geo. 3.

A declaration in
replevin.

To be engrossed
on treble penny.

3. LONDON, to wit. *C. D.* was summoned to answer *A. B.* of a plea, wherefore he took the goods and chattels of the said *A. B.* and them unjustly detained against gages and pledges until, &c. And whereupon the said *A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the day of , (any day after the distress made, and before the suit commenced) in the year of the reign of our sovereign lord *George* the Third, now king of Great Britain, &c. at London, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, to wit; in a certain place there called , took the goods and chattels following, to wit, (here insert the things taken, if known particularly; if not, a sufficient quantity of different sorts of household furniture to cover the same) belonging to him the said *A. B.* and unjustly detained the said things so taken against sureties and pledges until, &c. whereby the said *A. B.* says, that he is injured, and hath sustained damages to the value of pounds, and therefore he brings suit, &c.

Avowry for rent
in replevin.

To be engrossed
on treble penny.

4. AND the said *C. T.* by *M. T.* his attorney, comes and defends the force and injury when, &c. and well avows the taking the said goods and chattels in the said place in which, &c. and justly, &c. because he says, that the same place, in which the taking the said goods and chattels is supposed to be done, contains, and at the same time, when the taking the said goods and chattels is supposed to be done, contained a certain messuage or tenement, with the appurtenances, in the said street called in the parish of *St. Mary-le-Bow*, in the ward of *Cheap*, in the city of London aforesaid, of which said messuage or tenement, with the appurtenances, before the said time in which, &c. one

E. F.

E. F. was seised in his *demesne* as of fee; and being so seised, the said *E. F.* before the said time when, &c. to wit, on the day of in year of the reign of our sovereign lord *George* the Third, at *London* aforesaid, in the parish of *St. Mary-le-Bow*, in the ward of *Cheap* aforesaid, demised the said messuage or tenement, with the appurtenances, to the said *C. D.* To hold to him the said *C. D.* and his assigns, from the day of then last past, before the date of the said lease, for the term of years from thence next ensuing and fully to be complete and ended, by virtue of which said demise the said *C. D.* was possessed of the said messuage or tenement, with the appurtenances aforesaid; and being so thereof possessed, he the said *C. D.* before the said time when, &c. to wit, on the day of , in the said year of the reign of our sovereign lord *George* the Third, demised the said messuage or tenement, with the appurtenances, to the said *A. B.* to hold the same from the day of then next following, for the term of years from thence next ensuing, and fully to be complete and ended: *Yielding*, therefore, for the said year to the said *C. D.* or his assigns, the rent of pounds, of lawful money, &c. at the four usual times of payment of rent in the year, to wit, on the day of , the day of , the day of , the day of , and the day of , by even and equal portions: By virtue of which said demise, the said *A. B.* entered into the said messuage or tenement, with the appurtenances, and was possessed thereof and occupied the said messuage or tenement, with the appurtenances, for the space of three quarters of a year; and because the sum of pounds, of the said rent, after the demise so made for the time aforesaid, on the day of last past, and before the taking the said goods and chattels, was in arrear and unpaid to the said *C. D.* the said *C. D.* well avows the taking the said goods and chattels in the said place in which, &c. and justly, &c. for the said pounds, being in arrear to the said *C. D.* in form aforesaid, as in the said messuage or tenement, with the appurtenances, bound and liable to the distress of the said *C. D.* in form aforesaid; and this he is ready to verify; *Wherefore* he prays judgment, and a return of the said goods and chattels to be adjudged to him, &c.

A plea in bar to an avowry that there is no rent in arrear.

To be engrossed on treble penny.

5. AND the said *A. B.* says, That the said *C. D.* for the reasons before alledged, ought not to well avow the taking the goods and chattels in the place in which, &c. because he says, That the said pounds, or any part thereof of the rent aforesaid, at the said time when, &c. was not in arrear or unpaid to the said *C. D.* as the said *C. D.* in his said avowry has above alledged; and this he prays may be enquired of by the county: And the said *C. D.* does so likewise: THEREFORE it is commanded to the sheriff, that he cause to come before our lord the king, at *Westminster*, from, &c. (*the return of the venire*) twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

NOTE: The above declaration, plea, replication, and award of *venire*, complete THE ISSUE in *replevin*, only adding a memorandum to the declaration and plea, if necessary, as in a common action.

In making up the record in *replevin*, you add *placita's* as in a common action; the *jurata* the same, *mutatis mutandis*.

If judgment go by default, or the plaintiff in *replevin* be nonsuited, you must execute a writ of inquiry.

The form of a writ of inquiry in *replevin*, where judgment is for defendant on a nonsuit.

To be engrossed on five six-penny stamps.

6. GEORGE the Third, &c. To the sheriffs of *London*, greeting: WHEREAS *C. D.* was summoned, &c. (*as in the declaration and plea, or avowry, to the end thereof*) and the same day was given to the said *C. &c.* on which day came the said *C.* into our court before us at *Westminster*, and the said *A.* although solemnly called, did not come, nor further prosecute his writ aforesaid: Therefore it is considered that the said *A.* take nothing by his writ aforesaid, but be in mercy for his false claim thereof; and that the said *C.* do go thereof without day, &c. Therefore we command you, that according to the form of the statute in such case lately made and provided, by the oath of twelve good and lawful men of your county, you diligently inquire how much of the yearly rent aforesaid, at the same time of taking and distraining of the goods and chattels aforesaid, was in arrear and unpaid; and how much the goods and chattels aforesaid,

aforesaid, so as aforesaid taken and distrained were worth, according to the true value of the same, and the inquisition, which, &c. send to us from (*the return of the inquiry*) under your seals, and the seals of those by whose oath you shall take that inquisition, together with this writ. WITNESS, *William Earl Mansfield, at Westminster, &c.*

7. GEORGE the Third, &c. To the sheriff of *Middlesex, greeting*: Put by upon the petition of the petitioner, on (*the return*) wheresoever we shall then be in *England*, the plaint which is in your county, by our writ between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and summon by good summoners the aforesaid *C.* that he be then there to answer the aforesaid *A.* hereof: and have there the summoners and this writ.

WITNESS, &c.

The form of the writ of **POUND.**

To be engrossed on a five sixpenny stamp.

8. GEORGE the Third, &c. To the sheriff of *Middlesex, greeting*: WE command you, that you cause to be recorded in your full county the plaint which is in the same county, without our writ, between *A.* and *C.* of the goods and chattels of the said *A.* taken and unjustly detained, as it is said, and have the record before our justices at *Westminster (the return)* wheresoever, &c. under your seal, and the seals of four lawful suitors of the same county, of those who were present, at the recording it, and prefix the same day to the parties that they be then there, to proceed in that plaint according to justice, and have there the names of the said four suitors, and this writ. *Witness, &c.*—LET this writ be executed, if the aforesaid *A.* petition for it, and otherwise not.

The form of the writ of **RECORDARI.**

Five sixpenny stamps.

See Fitzherbert's *Natura Brevium* 4to. Edit. 1756.

9. GEORGE the Third, &c. To the sheriffs of *London, greeting*: WHEREAS *A. B.* lately in our court before us at *Westminster*, was summoned to answer to *C. D.* in an action, wherefore he took (*the goods, &c. taken*) the goods, &c. of him the said *C. D.* and unjustly detained them
against

The form of the writ of **RE-TORNO HABENDO** against the plaintiff by default.

Five sixpenny stamps.

against fureties and pledges, &c. as he alledged; and the said C. afterwards made default in our said court before us, wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said A. might depart the court without day, and should have a return of the goods, &c. aforesaid: *Therefore* we command you, that without delay you return the said goods, &c. to the said A. and you shall not deliver them at the complaint of the said C. without our writ, which shall expressly mention the said judgment, and in what manner you execute this writ, you shall make appear to us, (*the return*) wheresoever, &c. and have you there this writ. *Witness, Lloyd Lord Kenyon, at Westminster, &c.*

The form of
the writ of
SECOND DE-
LIVERANCE.

Five sixpenny
stamps.

10. GEORGE the Third, &c. To the sheriffs of London, *greeting*: If C. D. shall give you security that he will prosecute his claim, and also return the goods, &c. which in our court before us were lately adjudged to A. B. through the default of the said C. WE command you, that if by means of our writ *de retorno habendo*, lately directed to you for that purpose, you have made a return of the said goods, &c. to the said A. B. then do you cause them to be re-delivered to the said C. D. and by fureties and safe pledges compel the said A. that he be before us on (*the return*) wheresoever, &c. to answer to the said C. D. for taking and unjustly detaining the said goods, &c. aforesaid; and have you there the names of the pledges and this writ. *Witness, Lloyd Lord Kenyon, &c.*

The sheriff's
return to the
foregoing writ.

11. By virtue of this writ to me directed, I have caused to be re-delivered to the within named C. D. his goods, &c. within-mentioned, as I am within commanded to do. The pledges within-named are *John Doe* and *Richard Roe*.

The answer of
John Wilkes, Esq;
and
Frederick Bull, Esq; } Sheriffs.

12. GEORGE

12. GEORGE the Third, &c. To the sheriff of *Essex*, greeting: WHEREAS we lately commanded you by our writ, That WHEREAS *C. D.* had been attached by our writ of second deliverance to appear in our court before us to answer *A. B.* in an action, wherefore he took the cattle of the said *A.* and unjustly detained them against sureties and pledges: And the said *A. B.* should depart hence without day, and that the said *A. B.* and his pledges of prosecuting should be amerced: And that the said *C. D.* should have a return of the goods, &c. aforesaid irreplegiab^{le}, and that you without delay should make a return of those goods, &c. to the said *C. D.* to be detained by him irreplegiab^{le}, and in what manner you should execute that writ, you should make known to us, (*the return*) wheresoever, &c. and you at that day returned to us, that the goods, &c. aforesaid, were *eloigned* by the said *A. B.* to places unknown to you, so that you could not return or deliver those goods, &c. to the said *C. D.* as you was commanded by the said writ: Therefore we command you, that you take so many goods, &c. of the said *A. B.* to the value of the goods, &c. aforesaid, before taken by the said *A. B.* in *withernam*, and deliver them to the said *C. D.* to be kept by him irreplegiab^{le}, until you can make a return of those goods, &c. before taken to the said *C. D.* and in what manner you shall execute this our mandate, do you make appear to us on (*the return*) wheresoever, &c. and that you cause further to be done therein what of right, and according to the laws and customs of this our kingdom of *Great Britain* you shall see meet to be done. We also command you, that if the said *C. D.* shall make you secure of prosecuting his claim, and returning the chattels aforesaid, if a return thereof should be adjudged, then do you compel the said *A. B.* by sureties and safe pledges, that he be before us (*the return*) wheresoever, &c. to answer as well to us for the contempt as to the said *C. D.* for his damages and injury done him in this case; and have you there this writ. Witness, *Lloyd Lord Kenyon*, at *Westminster*, &c.

The form of the writ of CAPIAS IN WITHERNAM. Five sixpenny stamps.

King's Bench. Hilary Term, 1791.		Monies out of pocket.	Agent.			Attorney.		
WESTBROOK, Spinster, v. YATES, Esq.		£. s. d.	£.	s.	d.	£.	s.	d.
Instructions and warrant to sue	-	0 2 7	0	2	7	0	4	4
Defendant having seized for double rent, attending upwards of three hours, making the replevin, &c.	-	0 0 0	0	6	8	0	13	4
Paid under-sheriff for replevin bond, and his fee	-	3 3 0	3	3	0	3	3	0
Paid officer for restoring goods	-	0 10 6	0	10	6	0	10	6
Paid auctioneer appraising same, and swearing to the value	-	0 10 6	0	10	6	0	10	6
Drawing PRECIPE for re. fa. lo. and copy	-	-	0	1	6	0	3	0
Paid for re. fa. lo. and fee	-	0 5 0	0	8	4	0	11	8
Paid returning	-	1 0 0	1	0	0	1	0	0
Attending for that purpose	-	0 0 0	0	1	8	0	3	4
Letters and porters	-	0 0 0	0	1	0	0	2	0

Easter Term, 1791.

Instructions for declaration	-	0 0 0	0	1	8	0	3	4
Drawing same folio 6.	-	0 0 0	0	3	0	0	6	0
Paid to special pleader to settle same	-	0 10 6	0	10	6	0	10	6
Attending and instructing him	-	0 0 0	0	1	8	0	3	4
Engrossing declaration, stamps and war- rant	-	0 0 3	0	1	3	0	2	3
Notice of declaration, copy and service	-	0 0 0	0	1	6	0	3	0
Rule to avow	-	0 1 10	0	2	2	0	2	6
Searching for and demanding avowry	-	0 0 0	0	2	8	0	5	4
Instructions to COUNSEL on motion to plead several matters	-	0 0 0	0	1	3	0	2	6
Paid him a fee thereon of	-	0 10 6	0	10	6	0	10	6
Attending him and court	-	0 0 0	0	1	8	0	3	4
Paid for rule thereon	-	0 6 0	0	6	0	0	6	0
Copy and service	-	0 0 0	0	1	6	0	3	0
Drawing plea in bar to avowry, folio 9	-	0 0 0	0	4	6	0	9	0
Fee to COUNSEL to settle and sign same	-	1 1 0	1	1	0	1	1	0
Attending thereon	-	0 0 0	0	1	8	0	3	4
Engrossing plea to file and duty	-	0 0 3	0	1	9	0	3	3
Rule to reply	-	0 1 10	0	2	2	0	2	6

(a) NOTE: The items and charges in this bill of costs, have been compared with, and corrected by the bill of costs, for plaintiff in replevin, in the case of *Squires v. Elliot*, B. R. Trinity Term 1786; which underwent a

regular taxation by THE MASTER, and is published in "The Attorney and Agent's Table of Costs," published by Whieldon and Butterworth, in Fleet-street, 1789.

	Monies out of pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Searching for and demanding replica- tion - - -	0 0 0	0 2 8	0 5 4
Paid for paper-book, fol. 34 - -	2 1 2	2 1 2	2 1 2
Copy thereof for use - - -	0 0 0	0 5 8	0 11 4
Entring same on roll, and paid - -	0 10 8	0 16 8	1 2 8
Warrants and docket - - -	0 3 0	0 3 4	0 3 8
Notice of trial, copy, and service - -	0 0 0	0 1 6	0 3 0
Drawing <i>placita</i> and <i>jurata</i> - - -	0 0 0	0 1 6	0 3 0
Engrossing record - - -	0 0 0	0 6 6	0 13 0
Parchment and stamps - - -	0 8 0	0 8 0	0 8 0
Writ of <i>venire</i> , duty, sealing, and fee	0 3 2	0 5 7	0 8 0
Attending sheriff's office to get same returned - - -	0 0 0	0 2 8	0 5 4
Writ of <i>distingas</i> , duty, sealing and fee - - -	0 3 2	0 5 10	0 8 6
Paid returning same - - -	0 14 0	0 14 0	0 14 0
Attending for that purpose - - -	0 0 0	0 1 8	0 3 4
Paid signing record - - -	0 1 0	0 1 0	0 1 0
Paid clerk of treasury and fealer - -	1 18 0	1 18 0	1 18 0
Fee on passing record - - -	0 0 0	0 3 4	0 6 8
Paid entring cause - - -	0 11 8	0 11 8	0 11 8
Attending thereon - - -	0 0 0	0 1 8	0 3 4
Attending defendant's attorney to settle facts and papers to be admitted on either side, and drawing consent for that purpose - - -	0 0 0	0 3 4	0 6 8
Writ of <i>subpoena</i> , signing, sealing, duty and fee - - -	0 4 10	0 6 6	0 8 2
Two tickets or copies - - -	0 0 0	0 1 0	0 2 0
Serving two witnesses - - -	0 0 0	0 2 6	0 5 0
Paid each one shilling for their ex- pences - - -	0 2 0	0 2 0	0 2 0
Attending to take instructions for brief, for trial - - -	0 0 0	0 3 4	0 6 8
Drawing same, fol. 6. or three brief sheets, six shillings and eight-pence each - - -	0 0 0	1 0 0	2 0 0
Attending the witnesses to examine them, and to take minutes of their evidence - - -	0 0 0	0 3 4	0 6

K

Three

Bill of Costs for the PLAINTIFF in Replevin.

	Monies out of pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Three fair copies of brief, at the rate of three shillings and four-pence each brief sheet - - -	0 0 0	0 15 0	1 10 0
Three copies of consent, &c. to annex to brief - - -	0 0 0	0 2 3	0 4 6
Paid to Mr. <i>Erskine</i> , a consultation fee of - - -	1 1 0	1 1 0	1 1 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him thereon - - -	0 0 0	0 1 8	0 3 4
The like fee to Mr. <i>Partington</i> - - -	1 1 0	1 1 0	1 1 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him - - -	0 0 0	0 1 8	0 3 4
Paid chamber fees thereon - - -	0 7 6	0 7 6	0 7 6
Attending consultation - - -	0 0 0	0 6 8	0 13 4
To Mr. <i>Erskine</i> with his brief - - -	2 2 0	2 2 0	2 2 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him thereon - - -	0 0 0	0 1 8	0 3 4
The like to Mr. <i>Partington</i> - - -	1 1 0	1 1 0	1 1 0
His clerk - - -	0 2 6	0 2 6	0 2 6
Attending him - - -	0 0 0	0 1 8	0 3 4
Attending court, cause in the paper, three days - - -	0 0 0	0 10 0	1 0 0
Attending again when cause tried, and verdict given in favour of the plain- tiff - - -	0 0 0	0 6 8	0 13 4
Paid court fees - - -	3 3 6	3 3 6	3 3 6
Coffee-house expences for witnesses - - -	0 4 6	0 4 6	0 4 6
Term fee - - -	0 0 0	0 2 6	0 5 0
Letters and porters - - -	0 0 0	0 2 0	0 4 0

Trinity Term, 1787.

Rule for judgment - - -	0 1 10	0 2 2	0 2 6
Attending to get record stamped - - -	0 0 0	0 1 8	0 3 4
Paid - - -	0 5 0	0 5 0	0 5 0
Drawing and engrossing <i>poslea</i> - - -	0 0 0	0 1 8	0 3 4
Paid marking same - - -	0 0 6	0 0 6	0 0 6
Notice of taxing costs, copy and service - - -	0 0 0	0 1 0	0 2 0
Drawing bill, and copy to tax - - -	0 0 0	0 2 0	0 4 0

Attending

Bill of Costs for the PLAINTIFF in Replevin.

131

	Monies out of pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Attending taxation - -	0 0 0	0 1 8	0 3 4
Drawing and entring up final judgment - -	0 0 0	0 2 6	0 5 0
Attending at <i>Westminster</i> thereon -	0 0 0	0 1 8	0 3 4
Term fee - - - -	0 0 0	0 2 6	0 5 0
Letters, &c. - - - -	0 0 0	0 2 0	0 4 0

In the Sheriff's Court.

Chapman v. Yates.

Instructions and warrant to sue -	0 2 7	0 2 7	0 4 4
Attending sheriff's office, to give instructions to reply - -	0 0 0	0 1 8	0 3 4
Paid sheriff for replevin bond, &c. -	2 2 0	2 2 0	2 2 0
Paid his officers - - -	1 1 0	1 1 0	1 1 0
Attending when bond executed -	0 0 0	0 3 4	0 6 8
Entring plaint - - - -	0 0 0	0 1 8	0 3 4
Letters, &c. - - - -	0 0 0	0 2 0	0 4 0

In the *Common Pleas.*

Michaelmas Term, 1786.

Searching for <i>rec. fac. loq.</i> -	0 0 0	0 1 8	0 3 4
Instructions for declaration -	0 0 0	0 1 8	0 3 4
Drawing declaration, fol. 4. -	0 0 0	0 2 0	0 4 0
Engrossing same, duty, and warrant -	0 0 3	0 1 1	0 1 1
Entry on the roll - - -	0 0 0	0 0 8	0 1 4
Paid prothonotary - - -	0 2 0	0 2 0	0 2 0
Rule to avow - - - -	0 1 10	0 2 2	0 2 6
Searching for and demanding avowry	0 0 0	0 2 8	0 5 4
Attending summons for time to avow	0 0 0	0 1 8	0 3 4
Copying order - - - -	0 0 0	0 0 6	0 1 0
Attending second summons and copying order - - -	0 0 0	0 2 2	0 4 4
Term fee - - - -	0 0 0	0 2 6	0 5 0
Porters, &c. - - - -	0 0 0	0 2 0	0 4 0

Hilary Term, 1787.

Copying avowry, fol. 8. -	0 0 0	0 1 4	0 2 8
Searching whether rule to plead in bar given - - - -	0 0 0	0 1 8	0 3 4

Bill of Costs for the PLAINTIFF in Replevin.

	Monies out of pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Instructions to counsel, on motion to plead several matters - - -	0 0 0	0 1 3	0 2 6
Fee to him therewith - - -	0 10 6	0 10 6	0 10 6
Attending him and court - - -	0 0 0	0 1 8	0 3 4
Paid for rule - - - - -	0 14 0	0 14 0	0 14 0
Copy and service - - - -	0 0 0	0 2 0	0 4 0
Affidavit of service, duty, and oath in court - - - - -	0 3 1	0 4 7	0 6 1
Instructions to counsel, on motion, to make rule absolute - - -	0 0 0	0 1 3	0 2 6
To his fee - - - - -	0 10 6	0 10 6	0 10 6
Attending him and court - - -	0 0 0	0 1 8	0 3 4
Paid for rule absolute - - -	0 14 0	0 14 0	0 14 0
Copy and service - - - -	0 0 0	0 2 0	0 4 0
Summons for time to plead in bar, copy and service - - -	0 2 0	0 3 0	0 4 0
Order, copy and service - - -	0 2 0	0 3 0	0 4 0
Drawing plea in bar to avowry, fol. 18.	0 7 6	0 9 0	0 18 0
Paid special pleader to peruse and fet- tle - - - - -	0 7 6	0 7 6	0 7 6
Attending him - - - - -	0 0 0	0 1 8	0 3 4
Engrossing plea to deliver and duty -	0 0 6	0 3 6	0 6 6
Term fee - - - - -	0 0 0	0 2 6	0 5 0
Letters, &c. - - - - -	0 0 0	0 2 0	0 4 0

Easter Term, 1787.

Rule to reply - - - - -	0 1 10	0 2 2	0 2 6
Searching for, and demanding replica- tion - - - - -	0 0 0	0 2 8	0 5 4
Drawing interlocutory judgment, and award of inquiry, fol. 4. and entring proceedings, in all fol. 34. -	0 0 0	0 7 0	0 14 0
To special pleader, perusing and fettl- ing judgment - - - - -	0 3 6	0 3 6	0 3 6
Attending him thereon - - - -	0 0 0	0 1 8	0 3 4
Engrossing proceedings on paper and duty - - - - -	0 0 3	0 5 11	0 11 7
Entring same on the roll - - -	0 0 0	0 5 8	0 11 4
Warrants and docket - - - -	0 1 4	0 2 0	0 2 8
Paid prothonotary - - - - -	0 14 0	0 14 0	0 14 0

Paid

Bill of Costs for the DEFENDANT in Replevin.

133

	Monies out of pocket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Paid clerk of the judgments -	0 2 0	0 2 0	0 2 0
Notice of executing writ of inquiry, copy and service - - -	0 0 0	0 1 6	0 3 0

N. B. The rest of the charges as usual,
upon the execution of a writ of
enquiry.

The costs of ejectment in the Courts
of *Common Pleas*, same as in the
Court of *King's Bench*; except
only, that you pay 12s. 8d. for
signing judgment.

Bill of Costs for the DEFENDANT in Replevin.

Attending at <i>Turnham Green</i> , and mak- ing a distress on the household fur- niture of <i>Francis George</i> , taking in- ventory thereof, and drawing notice of distress - - -	0 0 0	0 10 6	1 1 0
Two fair copies of inventory, one to serve, and the other for use -	0 0 0	0 5 0	0 10 0
Searching sheriff's office, whether te- nant has brought a replevin, when found he had - - -	0 0 0	0 1 8	0 3 4
Paid man in possession four days, at 3s. and 6d. per day - - -	0 14 0	0 14 0	0 14 0

Michaelmas Vacation, 1786.

Taylor v. Haynes.

Retainer and warrant to defend -	0 0 7	0 2 2	0 4 4
Entering appearance in the county court	0 2 0	0 3 8	0 5 4
Searching for bail - - -	0 0 0	0 1 8	0 3 4
Inquiring after bail - - -	0 0 0	0 3 4	0 6 8
Porters - - - - -	0 0 0	0 0 6	0 1 0

Common Pleas.

Hilary Term, 1787.

Instructions and warrant to remove plaint into this court - -	0 2 0	0 2 7	0 4 4
Præcipe for <i>re. fa. lo.</i> to remove same, and copy - - - - -	0 0 0	0 1 3	0 2 6

K 3

Paid

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Paid curfitor for fame - - -	0	5	0	0	5	0	0	5	0
Fee thereon - - -	0	0	0	0	3	4	0	6	8
Attending sheriff therewith, and after- wards for return thereof - -	0	0	0	0	1	8	0	3	4
Paid sheriff for return, &c. -	0	14	6	0	14	6	0	14	6
Returning and filing <i>re. fa. lo.</i> -	0	2	0	0	2	0	0	3	0
Entring appearance - - -	0	2	6	0	4	2	0	5	10
Rule to declare - - -	0	1	10	0	2	2	0	2	6
Porters - - -	0	0	0	0	1	0	0	2	0

Easter Term, 1787.

Searching for and demanding declara- tion - - -	0	0	0	0	2	8	0	5	4
Drawing and engrossing judgment of <i>non pros</i> - - -	0	0	0	0	1	6	0	3	0
Duty for fame - - -	0	5	1	0	5	1	0	5	1
Entring proceedings on the roll -	0	0	0	0	1	0	0	2	0
Paid signing judgment - - -	0	5	4	0	5	4	0	5	4
Attending for that purpose - -	0	0	0	0	1	8	0	3	4
Writ of <i>ret. hab.</i> and fee - - -	0	4	6	0	5	10	0	11	2
Attending sheriff to get writ returned	0	0	0	0	1	8	0	3	4
Paid for return - - -	0	2	4	0	2	4	0	2	4
Paid filing fame and attending -	0	1	0	0	2	8	0	4	4
Term fee - - -	0	0	0	0	2	6	0	5	0
Messengers and letters - - -	0	0	0	0	2	0	0	4	0

The statute of 2 Geo. 2. c. 19. gives
the defendant in *replevin*, after
having obtained *Non Pros*, double
costs, for which he may proceed
upon the replevin bond.

Common Pleas.

Easter Term, 1787.

Instructions and warrant to proceed	0	2	7	0	2	7	0	2	7
Attending sheriff for leave for that purpose, and signing indemnity -	0	0	0	0	1	8	0	3	4
Paid sheriff - - -	0	6	8	0	6	8	0	6	8
Copying of replevy bond - - -	0	0	0	0	1	6	0	3	0
<i>Capias</i> - - -	0	5	4	0	8	8	0	12	0

The rest of the articles of charges as usual.

CHAPTER THE NINTH.

The Law of Ejectment.

1. **A**N EJECTMENT is a mixed action, by which a lessee for years, when ousted, may recover his term and damages; it is *real* in respect of the lands, but *personal* in respect of the damages. Since the disuse of real action, this mixed proceeding is become the common method of trying *the title* to lands or tenements. In this chapter, therefore, the following points are meant to be investigated:

See Mr. Serjeant
Runnington's
Treatise on
Ejectment, p. 1.
5 Co. 105.
Comb. 250.
9 Co. 97.
2 Burr. 667.
10 Mod. 177.

1. *The methods of proceeding.*
2. *For whom and in what cases it lies.*
3. *For what things it lies.*
4. *Ejectment for non-payment of rent.*
5. *The declaration, demise, &c.*
6. *Service of declaration, &c.*
7. *Defence and plea.*
8. *Evidence and verdict.*
9. *Judgment and costs.*
10. *Writ of error and execution.*
11. *Action for mesne profits.*
12. *Of a second ejectment.*
13. *Practice and precedents.*

I. *The Methods of proceeding in Ejectment.*

1. THE ANCIENT way of proceeding in ejectment, was by actually sealing a lease, on the premises, by the party in interest who was to try the title: And this method is still in use, in the following cases:

2. FIRST. Where the houses, or things for which the ejectment is brought, is empty: But a very little matter is sufficient to keep possession; and, therefore, where a tenant had left some beer in the cellar, and the landlord proceeded as on a *vacant possession*, the judgment was set aside.

Strange. 1069.
Vide ante page
96. pl. 1.

3. SECONDLY. When a *corporation* is lessor of the plaintiff, they must give a letter of attorney to some person to enter and seal a lease on the land; for a corporation cannot make an attorney or a bailiff except by deed, nor can they appear but by making a proper person their attorney by deed; therefore, they cannot enter and demise upon the land, as natural persons can.

Carth. 390.
Ld. Ray. 135.

K 4

4. THIRDLY.

4. THIRDLY. When the several interests of the lessor of the plaintiff are not known, for, in that case, it is proper to seal a lease upon the premises; lest they should fail in setting out in their declaration the several interest which each man passes.

1 Keble 690.
795.

5. FOURTHLY. When the proceedings are in an inferior court, they must proceed by actually sealing a lease, because they cannot make rules to confess lease, entry, and ouster, in as much as inferior courts have not authority to imprison for disobedience to their rules.

2 Crompton's
Practice 152.
published by T.
Whieldon, Fleet
Street, in the
year 1787.

6. THE MODERN METHOD of proceeding in *ejectment*, intirely depends on a string of legal fictions; no actual lease is made; no actual entry by the plaintiff; no actual ouster by the defendant; but all are merely ideal for the sole purpose of trying the title. To this end, a lease for a term of years is stated, in the proceedings, to have been made by him who claims title, to the plaintiff who is generally an ideal fictitious person, who has no existence; though it ought to be a real person to answer for the defendant's costs. In this proceeding, which is THE DECLARATION; for there is no other process in this action, it is also stated, that *the lessee*, in consequence of the demise to him made, entered into the premises; and that *the defendant*, who is also now another ideal fictitious person, and who is called *the casual ejector*, afterwards entered thereon, and ousted the plaintiff; for which ouster, the plaintiff brings this action. Under this declaration is written a notice, supposed to be written by this casual ejector, directed to *the tenant in possession* of the premises; in which notice, the casual ejector informs the tenant of the action brought by *the lessee*, and assures him, that as he, the casual ejector, has no title at all to the premises, he shall make no defence; and, therefore *he* advises *the tenant* to appear in court, at a certain time, and defend his own title, otherwise *he*, the casual ejector, will suffer judgment to be had against *him*, by which the *actual tenant* will inevitably be turned out of possession.

7. The declaration, with *the notice* subjoined, is then served on the tenant in possession, and it must be read and explained to the party served at the time of the service; and, by the common law, the declaration, against the casual ejector, must have been served either on the tenant himself or on his wife, and could not have been served on any of his children or servants. But this is now remedied by

4 Geo.

4 Geo.2.c.28. "In all cases between LANDLORD and TENANT, when half a year's rent is in arrear, for which no sufficient distress can be found on the premises," as will be shewn hereafter.

Vide ante page 96. pl. 1.

8. By this friendly caution, the *tenant* in possession has then an opportunity of defending his title, which, if he omit to do in a limited time, he is supposed to have no right at all; and, upon judgment being had against the *casual ejector*, the *real tenant* will be turned out of possession by the sheriff. But if the tenant apply to be made defendant, it is allowed him upon this condition, that he enter into a *rule of court*, to confess, at the trial of the cause, *three* of the *four* requisites for the maintenance of the plaintiff's action, viz. the *lease* of the lessor, the *entry* of the plaintiff, and the *ouster* by the *tenant* himself, who is now made *defendant*, instead of the *casual ejector*; which requisites, as they are wholly fictitious, should the defendant put the plaintiff to prove, he must, of course, be *non-suited* at the trial for want of evidence; but by such stipulated confession of *lease*, *entry*, and *ouster*, the trial will stand upon the merits of the *title* only. This rule being entered into, THE DECLARATION is now altered by inserting the name of the *tenant*, instead of the fictitious name of the *casual ejector*; and the cause goes to trial under the name of the *fictitious lessee*, on the demise of the lessor; the *person claiming title* AGAINST the now defendant.

9. THE LESSOR is bound to make out, on the trial, his *title* to the premises, otherwise his *nominal lessee* cannot obtain judgment to have possession of the land for the term supposed to be granted; but if he make out his title in a satisfactory manner, the judgment is given for the *nominal plaintiff*, and a writ of possession goes in his name to the sheriff to deliver possession.

10. But if the defendant fail to appear at the trial, and to confess *lease*, *entry*, and *ouster*, the nominal plaintiff must indeed then be *non-suited* for want of proving these requisites; but judgment will nevertheless, in the end, be entered for him against the *casual ejector*; for the condition, on which the tenant was admitted, is broken, and therefore the plaintiff is put again in the same situation, as if he had never appeared at all; the consequence of which would have been, as we have already mentioned, that judgment must pass for the *plaintiff*, and the *tenant* would have been turned out of possession. The same process, therefore,

3 Burr. 1304.

therefore, as would have been had, provided no conditional rule had been made, must now be pursued as soon as the condition is broken; but execution will be stayed, if any landlord, after default of the tenant, applies to be made a defendant, and enters into the usual rule to confess *lease, entry, and ouster*: And these matters of ejectment are immediately under the controul of the court, who, on application, will model them to answer every purpose of justice and convenience.

II. For whom and in what Cases Ejectment lies.

3 Black. Com.
206.
Run. Eject. 9.

1. It is a general rule, that no person can, in any case, bring AN EJECTMENT, unless he have in himself, at the time, a *right of entry*; for although, by the modern practice, the defendant is obliged, by rule of court, to confess lease, entry, and ouster; yet that rule was only designed to expedite the trial of the plaintiff's right, and not to give him a right which he had not before; and, therefore, when it happens that the person claiming title to the lands has no *right of entry*, he cannot maintain this action.

Elliot v. Danby,
2 Espinasse's
Digest 132.

(a) By the 13
Eliz. c. 7.
21 Jac. 1. c. 19.
(b) By 27 Hen. 8.
c. 16.

Sir T. Jones 196.

2. Thus where the assignee of a bankrupt, brought an ejectment for part of the bankrupt's estate, before *the assignment* to him by the commissioners was *enrolled*, he was non-suited; for a bankrupt's estate must be sold by deed indented and enrolled, (a) and such bargain and sale must be enrolled within six months, (b) so that before the enrolling, the assignees have no legal title.

3. But, in the case of a common *bargain and sale*, the estate passes by the *contract*, and is *executed* immediately by the operation of the statute of uses; and, therefore, under such a conveyance, the *bargainee* may, before enrollment, maintain this action.

Littleton, Sec.
tion 595.

4. If tenant in tail make a feoffment in fee, and thereby make a discontinuance, and die, the issues in tail cannot *enter*, and therefore cannot maintain this action. The case is the same with other discentments which toll entries; but by the 32 Hen. 8. c. 33. "If a *disseisor* die within five years "after *disseisin* done, and the lands descend to his heir, such "descent shall not take away the entry of the *disseisee*, "though he has made no claim." But if there be five years quiet possession in the disseisor, continual claim is still as necessary as it was before the statute.

5. By

5. By the common law, if the husband seised in right of his wife, had enfeoffed another, and died, this was a discontinuance, and took away her *right of entry*, so that she could not maintain an ejectment. But now, by the 32 Hen. 8. c. 28. "No act of the husband only shall make a discontinuance of, or prejudice, the inheritance, a freehold of the wife; but that after his death, she and her heirs may enter on the lands in question."

6. EJECTMENT, being an action of *trespass* in its nature, and said to be done *vi et armis*, it follows that the *ouster* must be done to the person complaining, and not to another person who had the plaintiff's possession, though the plaintiff's title be affected by such ouster. For it were an impropriety to say that the defendant *vi et armis* ejected the plaintiff, when it appears that he had not the actual possession, but that it was, at the time of the ouster, in another. Run. Eject. 9.

7. Therefore, if *A.* lessee for years, make a lease to *B.* at will, and *B.* is ejected, *A.* cannot have this action upon that *ouster*; because, though the possession of *B.* was in law, the constructive possession of *A.* yet the trespass *vi et armis*, which is complained of in this action, must be against the actual possession; and that was in *B.* But it seems, in this case, that *B.* though but *tenant at will*, may make a lease to punish the trespass and ejectment; otherwise there would be an injury done, and no one allowed to punish it. So if *A.* be lessee for years, remainder to *B.* for years, and *A.* is ejected, and then his term expires, *B.* shall not have an ejectment on the *ouster* of *A.*; because the possession was not *actually* in him, and he cannot complain of a *trespass* done to another. Roll. Rep. 3.

8. The plaintiff also, although he may, in fact, possess a good and lawful title, yet he may be *barred* of his right of entry, and so deprived of his power of recovering in this action; for, by the statute of limitation, 21 Jac. 1. c. 16. "No person shall make an entry into lands, &c. but within twenty years after his right and title shall first accrue, with the usual savings for infants, feme-coverts, persons insane, &c."

9. Therefore, if the lessee of the plaintiff is not able to prove himself or his ancestors to have been in possession within twenty years before the action brought, he shall be non-suited. Bull. N. P. 102.

10. If a declaration in ejectment has been delivered within twenty years, and a trial had, whereby lease, entry, and

and ouster, has been confessed, if the plaintiff has been non-suited in that action, and brings another ejectment, *after the twenty years expired*, the former confession of lease, entry, and ouster, shall not be sufficient to save the running of the statute against the plaintiff; for there must be an actual entry within twenty years.

Rich on the demise of Lord Cullen v. Johnstou. 2 Strange 1142. Bul. N. P. 102. 2 Espinasse's Dig. 135.

11. The possession of the lessor of the plaintiff within twenty years which is necessary to give him a title must be an *actual* possession, not a *presumptive* or *implied* one: Therefore in an ejectment for *mines*, the lessor of the plaintiff proved himself to be *lord of the manor*, and that he was in possession of the *manor*, but no entry was proved to have been made on the *mines* within twenty years, and it was held insufficient; for the mines are a distinct possession and may be a different inheritance from the manor.

Salk. 421. 1 Ld. Raym. 741. 1 Burr. 119. Burr. Settlement Cases 451. 11 Mod.

12. The proof of possession within twenty years is not only necessary to support the title of the lessor of the plaintiff; but such a possession is a positive title to the defendant; for it is like a descent which tolls an entry and gives a *right of possession* which is sufficient in ejectment to bar the plaintiff from his action; but the twenty years possession which is sufficient to bar an ejectment, or to give a title must be an *adverse possession*, for where it appears not to be adverse the statute of limitations does not run: therefore where a man made a mortgage as a collateral security, though the *mortgagor* had continued in possession for above twenty years yet the interest having been paid for that time, it was held that the *mortgagee* was not barred in bringing his ejectment; for there was no *adverse possession*, their titles being the same.

6 Mod. 44. Salk. 205. 5 Burr. 2635. Co. Lit. 195. Hob. 120. Co. Lit. 242.

13. The possession of one *joint tenant* is the possession of the other, so as to prevent the statute from being a bar in ejectment; for each joint tenant hath a right to the whole, and therefore the entry and possession of one is as good as that of both: and so it is of *coparceners*, or *tenants in common*; for, in general where two persons claim by the same title or where one party claims *under* or *through* the other, there shall be no *adverse possession* so as to toll an entry of the one, or prevent the entry of the other from being at all times lawful; but what shall be deemed an *adverse possession* is a fact proper to be left to the jury; and therefore where one *tenant in common* had *thirty-six* years sole uninterrupted possession without any account to, or demand made, or claim set up by his *companion* the Court held these circumstances

Doce on the demise of Fisher v. Proffer, Mich. Term 15 Geo. 3. Cowp. 207.

circumstances a sufficient ground for a jury to presume an *actual ouster* of the co-tenant ; but in general where an adverse possession is relied on, the Court expects there should be proof of an *actual ouster*, for unless they are very strong, presumption from circumstances will not be sufficient.

1 Roll. Abr.
6. 9.
Bul. N. P. 104.
2 Esp. naffie's
Dig. 139.

14. The statute of limitation does not affect the interests of THE KING, and this privilege is derived to his lessee ; as where *A.* has a lease for ninety-nine years from the Crown, and is out of possession for more than twenty years, yet he may recover in ejectment ; for *A.* hath the king's possession, and the king is privileged from *non-claim* according to the maxim, *quod nullum tempus occurrit regi*. But now by 9 Geo. 3. c. 16. a time of limitation is extended to the case of the king, who is thereby disabled to make title, except to liberties and franchises, beyond the space of *sixty years* to be reckoned backwards from the time of commencing any suit or proceeding to recover the thing in question ; so that now a possession for sixty years will even be a bar to the king's prerogative.

2 Leon. 206.
Cro. Eliz. 331.
Run. Eject. 15.

15. But if the Crown grant the reversion, the privilege doth not follow it in the hands of the grantee, nor is a common person affected by the statute of limitations where the possession is in the hands of his tenant who has paid him rent within the time of limitation ; for the possession of a lessee for years is the possession of his lessor, and payment of rent is an acknowledgement of such possession : So, that during the continuance of the lease and payment of rent the lessee is in no sort of default, for he cannot *enter* and take the actual possession till the lease be expired ; but then, it seems that he should, because his *right of entry* first accrues.

16. A MORTGAGEE may maintain an action of ejectment either to obtain possession of the mortgaged premises or estate ; or to get into the receipt of the rents and profits only : But since the determination (*a*) that a mortgagee after giving notice to the tenant in possession under a lease prior to the mortgage, may *disfrain* as well for the rent in arrear at the time of the notice as for what accrues afterwards ; the common practice has been (*b*) for a mortgagee, when he only means to get into the receipt of the rents to keep down the interest, to give notice to the tenant of his mortgage and to pay the rents to him ; instead of resorting to AN EJECTMENT.

2 Esp. 140.
Run. Eject. 22.

(*a*) Mofs v.
Gallimore,
20 Geo. 3.
Doug. 279.

(*b*) Crompt.
Pract. 197.

17. A

Keech v. Hall.
Doug. 21.

White on the
demise of
Whatley v.
Hawkins.
Mich. 14 Geo.
3-
Bul. N. P. 96.

2 Esp. Dig.
140.

Smattle v. Wil-
liams.
Salk. 245.

(a) Strange
413.

17. A mortgagee may recover in ejectment, *without giving NOTICE TO QUIT*, against a tenant who claims under a lease from the *mortgagor* granted after the mortgage without privity of the *mortgagee*; but where lands are let for years and afterwards mortgaged, the mortgagee shall not be suffered to turn the tenant out of possession by the execution, although the lease with respect to the last year of the term, might be considered as a lease subsequent to the mortgage; and therefore to proceed in ejectment under this circumstance the mortgagee must give notice to the tenant, before the action, that he does not mean to disturb *his possession*, but only requires the rent to be paid to him and not to the *mortgagor*. On a mortgage for years being made to *A.* who, without the mortgagor joining, assigned the mortgaged premises to *B.* who assigns them to *C.*; this second assignee may maintain an ejectment against the mortgagor; for by executing the mortgage deed the mortgagor becomes *tenant at will* to *A.*; and as by the assignment of the mortgage he only becomes a *tenant at sufferance*, his continuing in possession under the covenant that he shall hold and enjoy the premises till default of payment, can never create a *disseisin* or divesting of the term, and so an ejectment may well be maintained.

18. By 7 Geo. 2. c. 20. "Where any action shall be brought on any *bond* for payment of money secured by mortgage or performance of the covenants therein contained; or when any action of ejectment shall be brought by any *mortgagee*, &c. his heirs, executors, administrators, or assigns for the recovery of the possession of any mortgaged lands, &c. and no suit shall be depending in equity for or touching the foreclosing or redeeming of such mortgaged premises, if the person who has a right to redeem shall appear and pay to the mortgagee or bring into Court (a) the principal, interest and costs, to be computed by the proper officer, he shall be discharged from the mortgage; and the Court shall, by rule, compel the *mortgagee* at the costs and charges of the *mortgagor* to pay the costs and charges, to re-convey the premises, and to deliver up all deeds relating to the title of the same: AND on bills of foreclosure in equity for the payment of the money or in default thereof for the recovery of the premises, such court of equity, upon application of the defendant having a right to redeem, and upon admission of the

" plaintiff's

" plaintiff's right, may, before hearing make order therein
 " as if the cause had been brought to a hearing. But this
 " act shall not extend to cases where the right of redemp-
 " tion is controverted, or the money due not adjusted ; nor
 " to prejudice any subsequent mortgage."

19. The mortgagee cannot include bonds, though they are a lien on the estate, nor can the assignee of a mortgagee include the payment of a bond and a simple contract due to him in his own right, in the principal, interest and costs ; nor will the court direct the prothonotary in computing them to take notice of any particular expenditures for necessary repairs made by the mortgagee, but—

Barnes 176,
 177. 182.

20 A second mortgagee who takes the assignment of a term to attend the inheritance and has all the title deeds may recover in ejectment against the first mortgagee, not having had notice of such prior mortgage.

Norris v. Ma-
 gain, 1 Term
 Rep. 755.

21. Where there are two or more mortgages, the Court will not stay proceedings and compel a redemption of one mortgage only, upon payment of the principal, interests and costs on that mortgage without paying the rest.

Doe on demise
 of Kaye v.
 Soley.
 2 Black. Rep.
 726.

22. If a subsequent purchaser or mortgagee has notice of a former purchase or incumbrance he shall not avail himself of an assignment of an old outstanding term prior to both, in order to get a preference ; but if he had no notice of such prior incumbrance or purchase, and has the first and best right to call for the legal estate, then if he gets an assignment of it, a court of equity will not deprive him of his advantage.

Willoughby v.
 Willoughby.
 1 Term Rep.
 736.

23. If a second mortgagee lend his money upon an estate upon which there is an old outstanding term and has notice at the same time of a certain incumbrance prior to his own, the prior incumbrancer has the best right to call for the *legal estate*, and to satisfy himself of any other incumbrances upon the estate, although such other incumbrances were not known to the second mortgagee at the time he advanced his money.

1 Term Rep.
 763.

24. The DEVISEE OF A TERM OF YEARS may maintain *ejectment* to recover the term demised, but it is necessary to shew the assent of the executors to the devise. In the case of the devise of a *freehold*, the devisee may immediately, and without any possession, maintain an EJECTMENT for the lands devised ; for after the testator's decease the law casts the freehold on the devisee, and even should the heir,

Young v.
 Holmes.
 1 Strange 70.

Co. Lit. 240.
2 Esp. Dig. 142.

heir enter and die seised and a discent be cast, yet the devisee may enter and so maintain an ejectment; for otherwise he would be without remedy.

Run. Eject. 10.
Co. Lit. 42.

25. The CONUSEE of a *statute merchant* or *statute staple* may maintain an ejectment; for these tenants have but a chattel interest and that for a period of uncertain duration, viz. till their debts are satisfied, yet this being a permanent interest the law has provided the means of securing it by this action.

Dougl. 456.
Bul. N. P. 104.
Ld. Ray. 718.
Salk. 563.

26. TENANT BY ELEGIT may maintain this action to be put into possession under the *elegit*; but he should prove the *judgment*, the *elegit* taken out upon it, and the *inquisition* and *return* thereon by which the lands in question have been assigned to him; and it should appear that the *elegit* had been lawfully executed; for if more than a *moiety* has been extended the execution is void and AN EJECTMENT cannot be maintained on it, nor the possession recovered on this title: But in executing an *elegit* the sheriff is not bound to deliver a *moiety* of each particular tenement and farm, but a *valued moiety* of the whole; for, as he is to deliver possession by *metes and bonds*, by such means only can a complete execution be made.

Run. Eject. 11.
1 Vent. 30.
7 Hen. 4. pl. 6.

27. AN EXECUTOR may have this action for an ejectment done to the *testator*; for although at the *common law* it was held, that personal wrongs died with the person yet when the *statute* 4 Edw. 3. c. 6. gave the action for goods taken out of the possession of the testator, it seemed but an equitable construction of that act to extend the remedy to terms for years, and to punish the trespass on that sort of property; especially as leases for years were looked upon as goods and chattels, it was the more reasonable to bring them all under the same regulation: and if the executors of a lessee for years are themselves ousted from the demised premises they may either have a special writ on the case or maintain an ejectment.

Per Ld. Hard-
wick, 2 Atk.
286.

28. AN ADMINISTRATOR on letters of administration being granted *pendente lite* may maintain an action of ejectment.

Shae v. Porter.
3 Term Rep.
13.

29. In case of a tenancy *from year to year* as long as both parties please, if the tenant die intestate his *administrator* has the same interest in the land which his intestate had; and the lessee of such an administrator may declare in an ejectment on a term for *seven years*, for the time is not conclusive.

30. A CORPORATION AGGREGATE may bring ejectment; but, to make themselves lessors of the plaintiff, they must give a letter of attorney to some person to enter and seal a lease upon the land; for a corporation cannot make an *attorney* or *bailiff* except by deed; nor can they appear but by making a proper person their attorney by deed; therefore they cannot enter and demise upon the land in person, as natural persons can; nor can they substitute an attorney to enter into a rule for their costs; nor will an attachment go against them for disobedience to that rule; hence they are obliged to make an actual lease upon the land, which lease must try their title, and then the attorney may proceed in the common method which is not altered by statute: But a declaration in ejectment by a corporation has been held good after verdict, without setting out that the *demise* was by *deed* or under the seal of the corporation.

Bul. N. P. 98.

Vide ante page
135. pl. 3.

Patrick v. Balls,
1 Ld. Raym.
136.

31. A CORPORATION SOLE may bring an ejectment: Thus where the copyholders of a manor belonging to a bishoprick during the vacancy of the fee, committed a forfeiture by cutting timber, the succeeding BISHOP was allowed to maintain an ejectment.

Bul. N. P. 108.

32. A COPYHOLDER if he is ousted by his lord may maintain an ejectment against him; for though he is called a *tenant at will* yet it is according to the *custom of the manor*, and the copyholder cannot be put out while he performs his services; but in such case it seems to be necessary that the copyholder should be warranted to make leases either by the custom of the manor or by licence of the lord, and then he may clearly have this action; and even without a custom to make leases the copyholder may clearly maintain this action against all persons except the lord. So, also, if the *lessee* of a copyholder be ejected by a stranger he may have this action; and so also, *the lord* shall in this action to recover the copyhold where the copyholder has committed a forfeiture.—*Sed qu.* If the surrenderer before admittance can recover against the lord or a stranger. (a)

Lit. Sect. 77.

1 Leon 4.
Cro. Eliz. 535.
676.
Co. Copy. 51.
4 Co. 26.

(a) Holdfast on
the demise of
Woollams v.
Clapham.
1 Term Rep.
600.

33. AN ATTORNEY cannot be a lessor in ejectment.

Dougl. 466.

34. TRUSTEES shall not recover possession from a disputed title with their *cestui que trust*; nor where it is clear that the person in whom the *legal estate* is vested, is a mere trustee, he shall not avail himself of his title to defeat his *cestui que trust* from recovering in ejectment.

3 Burr. 1901.
Dougl. 721.
777.
Cowp. 46.

Doe on the demise of Warry v. Miller. 1 Term Rep. 393.

Holdfast on the demise of Wol-lams v. Clapham. 1 Term Rep. 600.

Ibid.

Estwick v. Way, 1 Term Rep. 735.

Doe v. Barber, 2 Term Rep. 749.

Baker v. White 2 Term Rep. 159.

Roe on the demise of Eberel and Others v. Lowe and Others. 1 Term Rep. in the Com. Pleas, p. 447.

35. A surrender of chambers in the *New Inn* to the treasurer and ancients of the Society, made with their assent, to the intent that they may grant the said chambers to a purchaser, passes the estate to such purchaser before admission: And therefore upon the death of the surrenderee before admission THE SOCIETY may maintain ejectment for them.

36. The title to copyhold lands relates back from the time of the admittance to the surrender as against all persons but the lord; so that THE SURRENDEREE may recover in ejectment against the surrenderor, on a demise laid between the times of admittance and surrender.

37. The surrenderor of a copyhold estate is considered before admittance as a *trustee* for the surrenderee, and therefore is not permitted to set up a *formal objection* against the plaintiff recovering in EJECTMENT that property which he holds for the benefit of the surrenderee.

38. THE TRUSTEE of a term not having notice of an agreement for a lease before the grant of the term, may maintain an ejectment against the tenant in possession under the agreement.

39. A lease of a rectory by a rector becomes void by 13 Eliz. c. 20. by his non-residence for eighty days, of which a stranger may take advantage; and his *lessee* cannot maintain an ejectment against a stranger who enters without any title whatever.

40. Where an *infant* becomes entitled to the reversion of an estate leased from year to year, he cannot eject the tenant without giving the same notice as the original lessor must have given.

41. *A.* devises copyhold lands to "TRUSTEES in fee," (who are to be from time to time renewed) "in trust that the rents and profits shall for ever afterwards be disposed of to certain *charitable purposes*; and directs that the rent of the said copyhold lands being eleven pounds *per annum*, shall never be improved or raised, but shall continue at eleven pounds *per annum*; and that *B.* who was the tenant of the said copyhold lands, and his children and posterity which should succeed shall never be put forth or from the same, but always continue the possession paying the eleven pounds."—Neither *B.* nor his descendants were ever admitted on the court rolls. If *B.* took any estate it was an equitable *estate tail*; but the interest of *B.* (whatever it is) will not prevent THE TRUSTEES recovering

recovering in *ejectment* though the rent has been regularly paid.

III. Of what Things Ejectment will lie.

1. Originally *damages* only were recoverable in ejectment, and not the possession of the thing itself; but as terms for years began to swell to a great length, and were by such means put out of the power of *the freeholder*, it became reasonable and necessary to give the writ of *habere facias possessionem*, in order to recover possession of the land itself. When *the possession* therefore was given in this action it became necessary to confine it to such things as the sheriff might have recourse to after judgment to deliver the possession of; but the courts did not confine it to the rules in THE REGISTER which govern the *præcipe*, but allowed it to be brought for some things which could not be demanded in a *præcipe quod reddat*; thus, it hath been held that an ejectment lies of *an orchard*; because it is a word of certain signification, though in a *præcipe* it must be demanded by the name of *a garden*; and it being well enough understood the sheriff may with certainty deliver it upon an execution: So an ejectment has been allowed for *a stable* and *a cottage*, because they are words of a determined signification and may be delivered by the writ of execution: an ejectment of an *house* is good, though in a *præcipe* it ought to be demanded by the name of *a messuage*. So also, an ejectment of *a chamber* in the second story of such a house was held good, there being certainty enough to direct the sheriff in the execution, and in that case, it was said, that an ejectment *de una rooma* had been adjudged good; it has even been held, that an ejectment for *part of a house in A.* is well enough: So also, it lies of *a manor*; so many acres of *land*; of *meadow*; of *pasture*; of *wood*; or of a certain place called *the vestry in D*; of a *rectory* of a *chapel* which may be demanded by the name of *a messuage*, or for a *prebendal stall* after the collation to it. So also, it lies of *a cottage*, of *a stable*, of *a boilery of salt*, (a).

Runnington's
Ejectment.
p. 25.

Cro. Eliz. 854.
Cro. Jac. 465.
Noy 57.

Cro. Eliz. 818.
1 Lev. 58.
Style 215.

Cro. Jac. 654.
Palm. 337.

Stra. 695.
Cro. Eliz. 286.

11 Co. 55.
3 Leon. 210.
Hard. 57.

of

(a) Upon this Case Mr. Serjeant RUNNINGTON makes this Observation, "As I understand this case, "it is, where there is *a well of salt water*, and a man hath no inheritance in the soil of it, but only a lease or grant of so many buckets of the water as will arise which

L 2

"are called *boileries*; now if any "one withhold the buckets of water from the grantee he may "bring his action of ejectment; "and this differs from the case of "a *stream or running-water*; because there the thing demanded "is transient and always running; "but

1 Lev. 58.
 3 Lev. 96.
 Cro. Eliz. 818.
 Cro. Jac. 655.
 Cro. Car. 555.
 1 Sho. 364.
 Salk. 255.
 Strange 695.
 1084.
 Andrews 106.
 4 Mod. 98.
 Bul. N. P. 99.
 4 Burr. 2672.
 2 Crompt. Pract.
 155.
 Impey's Inst.
 Cler. 473.
 Run. Eject. 32.

Cro. Car. 301.
 Ld. Raym. 789.

See 27 Hen. 8.
 c. 91.
 32 Hen. 8. c. 7.
 2 & 3 Edw. 6.
 c. 13.

Co. Lit. 9. a.

Strange 54.

Cro. Car. 492.
 Cro. Jac. 496.
 8 Mod. 277.

of a coal mine, (a) of land and a coal mine in the same land, of a pool or standing water, of a stream or running water, (b) of a beast gate; for so many acres of herbage for a first mowing, for a hop yard; of a close called D. containing so many acres: So for a parcel of a highway, and though it be built upon, it shall be demanded as land; so also it lies for so many acres of furze and heath, or moor and marsh; so also, in the county of NORFOLK it may be brought for an alder car; or in IRELAND for mountains or so many acres of bog; because in these places the words have but one signification and comprehend respectively only one sort of land. An ejectment will lie for tithes, for although they are by the common law considered as part of the incorporeal inheritance, yet as by the statute 32 Hen. 8. c. 7. the same remedy is given to every lay person who having any estate or interest in tithes and is disseised thereof, as they have for lands, it is held that lay impropiators may bring an ejectment for tithes; and this doctrine has since been extended by analogy to tithes in the hands of the clergy; but it only lies against the person claiming or pretending to have title thereto, and not against those who only substract them. So also it was formerly held that an ejectment did not lie for a chapel because it was *res sacra* which was not demisable; but now since they are become lay inheritances they are recoverable in ejectment as other lay estates, but it should be demanded by the name of a messuage, or it is not formal.

2. But for a rent or common apprender, as common in gross, &c. or other things that lie merely in grant, no ejectment lies; because these being incorporeal things are in their nature invisible, *que neque tangi nec videri possunt*; and therefore not in their nature capable of being delivered in execution, but for common appendant or appurtenant an ejectment will lie, because the sheriff may give the possession of such common, by giving possession of the land to which it belongs.—For this reason an ejectment of a fishery in such a river has been held ill: So, an ejectment

“but here the water is fixed in a certain place within the bounds and compass of the well, and is considered as part of the soil; and therefore Sir Edw. Coke says, that by the grant of a boiletry of salt, the soil itself passes.” Runnington on Eject, 37. Co. Lit. 4. b.

Cro. Jac. 150. 1 Lev. 114. 1 Sid. 161.

(a) *Sed. qu.* If it ought not in this case to be brought for so many acres of land covered with water, Co. Lit. 5. Yelv. 143. 2 Bl. Com. 5. Yelv. 143.

(b) Cowp. 305.

for

for a certain *rivulet* or *water-course* called *D.* doth not lie, because it is impossible to give execution of a thing which is transient and always renewing; an ejectment will not lie for *pannage* although it will for the *herbage* of land; because *pannage* consists only of the waste which fall from the trees, which the swine feed on, and is not part of the soil itself, as the *herbage* is. It will not lie for a *croft*, nor of a *kitchen*, and an ejectment for a *messuage* or *tenement* without other descriptions is bad, or *demurrer* to the declaration, for its uncertainty, (a) but an ejectment for a *messuage* AND *tenement* is good after verdict. (b) An ejectment will not lie of *the fourth part* of a meadow, without shewing the number of acres the meadow contains: (c) And an ejectment for *finches*, *cloves* of land, *arable* and *pasture*, called, *Long furlongs*, containing ten acres, has been held bad (d): So also *de mineris carbonum* not saying how many is bad, unless it be the custom of the place to be so (e): So also an ejectment for one hundred acres of *waste*, or for one hundred acres of *mountain*, is bad for uncertainty (f): So also for a *house*, ten acres of land, and twenty acres of meadow, by the name of a *house and ten acres* of meadow, is bad; for it should be a *messuage* instead of a *house* (g): So also an ejectment for a *manor* must describe the quantity and species of the land contained therein (h).

Yelv. 143.
1 Brownl. 142.

Haid. 330.
1 Lev. 213.
1 Sid. 416.

(a) Cro. Eliz.
3 Lev. 228.
Cro. Jac. 125.
(b) Stewart v.
Denton, 1 Term
Rep. 11. See
also 1 Burr.
623. 2 Bac.
Abr. 169, and
Leach's Edition
Cro. Eliz. 186.
(c) 1 Lev. 213.
(d) Cro. Car.
573.
(e) Salk. 235.
(f) Palm. 100.
Salk. 255.
(g) 6th Edit. of
this Work.
Sed quere.
(h) Latch. 61.
Haley 146.

5 Burr. 2673.
1 Burr. 144.
629. 631.

3. The *general maxim* in laying houses and lands in ejectment is, that they must be specified in such a manner in the declaration that the sheriff may certainly know what to give the possession of, if the plaintiff should recover; for the judgment is in order to execution, and the judgment would be vain if execution could not be had of the thing specifically demanded, and yet at this day the practice is for the sheriff to deliver possession according to the direction of the plaintiff who therein acts at his peril.

IV. Of Ejectment for Non-payment of RENT.

1. By the common law an *actual entry* by the person claiming title to lands and tenements, was necessary to be made in order to support an action of ejectment, but in the case of a lease the landlord could not enter and take the actual possession until the lease was expired; it therefore became usual to insert a proviso that in case the rent of the demised premises was behind and unpaid at a cer-

tain time, the lessor should have a right to *re-enter*. In parol demises however from year to year the landlord could not have the benefit of such a proviso; and when the right of *re-entry* subsisted, great inconvenience frequently happened to lessors and landlords in cases of re-entry for non-payment of rent, by reason of the many niceties that attended such re-entries at common law, and even when a legal re-entry was made, the landlord or lessor was put to the expence, charge, and delay of recovering, in ejectment, before he could obtain the actual possession of the demised premises. It is therefore enacted,

In all cases between landlord and tenant where there is half a year's rent in arrear, and the landlord hath a right to re-entry the landlord may without demand or entry serve a declaration in Ejectment and recover the demised premises discharged of the lease.

2. By 4 Geo. 2. c. 28. s. 2., "That, in all cases, between LANDLORD and TENANT, as often as it shall happen that one half year's rent is in arrear, and the landlord or lessor to whom the same is due, hath right, by law, to re-enter for non-payment thereof; such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the land, tenements, or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such declaration in ejectment, shall stand in the place of a demand and re-entry; and in case of judgment against the casual ejector or nonsuit for not confessing lease, entry, and ouster, it shall be made appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; then, and in every such case, the lessor or lessors in ejectment shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit, and suffer judgment to be had on such ejectment, and execution to be executed there-
" on,

“ on, without paying the rent and arrears, together with
 “ full costs, and without filing any bill or bills for relief in
 “ equity, within six calendar months after such execution
 “ executed; then, and in such case, the said lessee or les-
 “ sees, his, her, or their assignee or assignees, and all other
 “ persons claiming or deriving title under the said lease,
 “ shall be barred and foreclosed from all relief or remedy,
 “ in law or equity, other than by writ of error for reversal
 “ of such judgment, in case the same shall be erroneous;
 “ and the said landlord or lessor shall, from thenceforth
 “ hold the said demised premises discharged from such lease;
 “ and if on such ejectment verdict shall pass for the de-
 “ fendant or defendants, or the plaintiff or plaintiffs shall
 “ become nonsuited therein, except for the defendant or
 “ defendants not confessing lease, entry, and ouster, then,
 “ in every such case, such defendant or defendants shall
 “ have and recover his, her, or their full costs.”

3. PROVIDED ALWAYS, “ That nothing herein contained
 “ shall extend to bar the right of any mortgagees of such
 “ lease, or any part thereof, who shall not be in possession,
 “ so as such mortgagee or mortgagees shall and do, within
 “ six calendar months after such judgment obtained, and
 “ execution executed, pay all rent in arrear, and all costs
 “ and damages sustained by such lessor, person or per-
 “ sons intitled to the remainder or reversion as aforesaid,
 “ and perform all the covenants and agreements, which,
 “ on the part and behalf of the first lessee or lessees, are
 “ and ought to be performed.

4. “ THAT IN CASE the said lessee or lessees, his, her, or
 “ their assignee or assignees, or other person or persons
 “ claiming any right, title, or interest, in law or equity, of,
 “ in, or to the said lease, shall, within the time aforesaid,
 “ file one or more bill or bills, for relief in any court of
 “ equity, such person or persons shall not have or continue
 “ any injunction against the proceedings, at law, on such
 “ ejectment, unless he, she, or they do, or shall, within
 “ forty days next after a full perfect answer shall be held
 “ by the lessor or lessors of the plaintiff in such ejectment,
 “ bring into court, and lodge with the proper officer, such
 “ sum and sums of money, as the lessor or lessors of the plain-
 “ tiff, in the said ejectment, shall, in his, her, or their an-
 “ swers sworn to be due, and in arrear, over and above all
 “ just allowance; and also the costs taxed in the said suit,
 “ there to remain till the hearing of the cause, or to be

The right of mortgagees not in possession shall not be barred by this act.

Of proceedings in equity.

“ paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her, or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so to them paid, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.

On tender of
arrear made
before trial, pro-
ceedings shall be
stayed.

5. “ PROVIDED ALWAYS, and be it further enacted, by the authority aforesaid, that if the tenant or tenants, his, her or their assignee or assignees, do or shall at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrear, together with the costs; then, and in such case, all further proceedings on the said ejectment shall cease, and be discontinued: and if such lessee or lessees, his, her, or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.”

Dec on the De-
mise of Fletcher
v. Lewis, 1 Burr.
614.

6. When there has been a recovery in ejectment, under this statute, and the possession acquiesced in, there cannot be a new ejectment brought on the ground that the judgment was by default, that it did not appear there had been any affidavit then made by the lessor of the plaintiff, that “ half a year’s rent was in arrear, and no sufficient distress to be had,” for the proceedings, being under the statute, the court will, in such case, presume that they were regular.

Downes v.
Turner, Salk.
597.
Bull. N. P. 97.

7. The defendant, in an action of ejectment for non-payment of rent, under this statute, may stay the proceedings, on paying the arrears of rent and costs of suit into court,

court, although the action is also brought on a clause of re-entry in the lease for not repairing; but if there has been a *tender* before service of the ejectment, or suing out of the writ, the proceedings are *irregular*, and may be set aside for irregularity.

Stevenson v. Norright,
2 Black. Rep. 746.

8. An ejectment may be brought against a tenant who gives notice to quit at such a time, and does not quit accordingly, as well as when the landlord gives the tenant notice to quit.

MS. cases of practice, and vide ante page 74.

9. A notice to quit, "or I shall insist on double rent," is good to support an ejectment.

Dougl. 175.

10. When the possession of the tenant is *adverse*, it is not necessary to give him notice to quit; in order to support an ejectment against him.

Cowp. Rep. 622.

11. A landlord must not receive any *rent* after an ejectment is brought, nor till the same is determined; if he does, it is a waiver of the *trespass* on which such action is grounded, and he will be nonsuited on the trial for so doing. His remedy, for the rent in arrear, is by action for the mesne profits.

2 Burr. 668.

12. On moving for judgment on the statute 4 Geo. 2. there must be an *affidavit*, stating that the landlord had a right to re-enter, &c. or that the defendant could not be legally served with a declaration (as the case may be); and that a copy thereof was affixed as aforesaid; or the court will not grant the rule.

V. The Declaration; the Demise, Entry, and Ouster.

1. THE action of ejectment lies in the king's bench, both by *bill* and by *original*; but in the common pleas, by *original* only.

2. THE DECLARATION in ejectment, must shew a good *demise*; should always set out the plaintiff's title as it is, and shew a good and subsisting one in him at the time of the ejectment brought; and therefore the demise, by the lessor of the plaintiff, must always be laid after his title has accrued, for the question is, whether the lessor could then make a lease? and it is usual to lay the demise as far back as possible; but it is not necessary to lay any day certain upon which the plaintiff entered; it is sufficient to lay a demise, and then say, in general, that he *afterwards* entered.

Yelv. 166.
2 Lev. 140.
1 Sid. 7.
1 Stra. 550.
Bull. N. P. 105.
3 Will. 274.

3. The

Salk. 257.
2 Black. Rep.
940.

Bull. N. P. 106.
Cro. Jac. 96.
Espinasse's
Digest 154.

2 Burr. 1159.
2 Stra. 1211.

11 Co. 55.

Bull. N. P. 109.
Salk. 254.

Sid. 295.
3 Will. 23.

Cro. Eliz. 13.

2 Roll. Abr.
704. 719.
3 Lev. 334.

3. The declaration should state the ejectment by the defendant, as done subsequent to the date of the supposed lease made to him by the lessor of the plaintiff; for otherwise, the ejectment, which is the injury complained of, would precede the time of the accruing of the plaintiff's title, and so there would be no cause of action. But, although this is the right and proper form of declaring, yet this being a fictitious action, it is not fatal if laid otherwise; for cases have occurred, in which the ejectment has been laid prior in point of time to the demise, and yet the court has held it to be good; that is, where the plaintiff declares, on a certain demise, and that the defendant *afterwards* ejected him, and then makes the *scilicet* mention a day prior to the demise; in which case, the "*scilicet*," being inconsistent with the "*afterwards*," shall be rejected as surplusage. This inconsistency will not vitiate the declaration, although it be objected *before trial*; and, *after verdict*, almost all repugnances will be cured, except such as affect the title or are in the process.

4. The declaration should state the certain quantity, and the nature of the land to be recovered; as arable, pasture, meadow, &c. for where the ejectment was for a messuage and close, containing three acres, and verdict for the plaintiff, the judgment was arrested; for it was not sufficient to state the quantity only, without also setting out the nature of the land: And so, where it was for a close of meadow, called *Partridge's Lees*, containing ten acres more or less, it was held to be ill for not shewing the precise quantity. So also of different kinds of land, it must shew how much there is of one kind, and how much of the other; for an uncertainty in the declaration, in these respects, is an incurable fault. The plaintiff, however, is not bound to declare for the exact quantity which he has a right to recover; for he may declare for any indeterminate quantity, and the general form now used is so, viz. one thousand acres of pasture, two thousand acres of meadow, &c. and he shall recover according to the quantity to which he proves a title. So if the plaintiff declare for any thing, and prove a title but to a moiety, he shall only recover so much; as where it was for a house, and the proof only went to shew that part of it was built by encroachment on the plaintiff's land; he recovered for so much as was so built on his land.

5. But although the plaintiff may thus recover in ejectment less than he declares for; yet if he prove a title to

more

more than he has declared for, he shall not recover it, for he can recover no more than he goes for in the declaration: So, although he declare for a time *longer* than he has a right to recover, yet he shall recover according to what his title really is: But a very exact description of the nature of the land is not required, and greater latitude is now admitted than formerly; because the lessee of the plaintiff is to *show* the lands to the sheriff, and to take possession of them at his peril.

1 Burr. 326.

Bull. N. P. 106.

1 Stra. 71.

2 Stra. 1063.

6. THE ENTRY which was necessary in ejectment, is now rendered useless by the GENERAL CONFESSION of the defendant of *lease, entry, and ouster*; but by 4 Ann. c. 16. s. 16. "No claim or entry shall be sufficient to avoid a *fine* levied with *proclamations*, unless the action be commenced within one year after *making* such entry or claim; nor to avoid the statute of limitation, unless the action be commenced within the same time;" and, therefore, in the case, and only in the case of a *fine*, it is necessary to prove an *actual entry*. Thus where a *fine* was levied, the lessor of the plaintiff proved, that he had gone to the house in question; and, at the gate, said to the tenant, that he was heir of the house and land, and forbid him for to pay any more rent to the defendant, but that he had not entered the house, when he made the demand, on which it was agreed, that the claim at the gate, without entering the house, was insufficient. Then it was proved, that there was a court before the house, and which belonged to it; and that, though the claim was at the gate, yet that it was on the land, and not in the streets, and that was holden to be a good entry, and clearly to support the ejectment. So where a stranger made an entry on the premises, on behalf of the lessor of the plaintiff, but without any authority from him at that time, claiming for him under a will; but the lessor of the plaintiff assented to it before the day laid in the demise; the court were clearly of opinion, that the entry was sufficient to support the ejectment brought on the title, the subsequent assent having established the validity of the first entry.

Salk. 286.

Bull. N. P. 102.

Dougl. 468.

7. As to OUSTER, the confession of lease, entry, and ouster, is sufficient to bar a non-suit for want of proof of *actual ouster*.

3 Burr. 1297.

VI. Service of the Declaration and its Incidents.

2 Stra. 1064.

1. If it be known where the tenant lives, he should be *personally* served with the declaration, if he does not live on the premises for which the ejectment is brought; and, therefore, where the attorney for the plaintiff knew where the defendant lived, but did not serve him: it was held to be irregular.

The service of declaration must be *personal* if it be possible.

2. So the words of the 4 Geo. 2, c. 28. are, "That the lessee may, without any formal demand or entry, serve a declaration in ejectment, in case the same cannot be *legally served*, or no tenant be in actual possession, then affix the same on the door of any demised messuage, or in case there be no messuage, then upon some notorious place on the land." In proceeding, therefore, both under this statute, as well as at common law, the lessor of the plaintiff must proceed by personal service if possible.

2 Black. Rep. 800.
Salk. 255.

3. But if the tenant himself cannot be found, then service on a *wife* or *servant* on the *premises* shall be sufficient. If the service be on the *wife*, it is alone sufficient to affect the tenant; but if it be on a servant, in that case there should be *some acknowledgement* for the tenant that he received it; and, in all cases, when the tenant cannot personally be served, the court will, by rule of court, order particular services of the declaration to be good, so as to give a good judgment for the plaintiff; as on a person in the house with another copy fixed to the premises; so a service on a woman who called herself *M. C.* (then in the house) on an affidavit, that *M. C.* was either not at home, or denied, and that one copy of the rule was affixed to the door, and another thrown in at the window, was deemed good service.

2 Burr. 1106.

2 Burr. 1161,
1181.

3 Strange 755.

Lilly's Prac.
Reg. 499.

4. If there are several tenants of the premises, there must be a declaration, in ejectment, delivered to each of them.

5. The person also who swears to the service of the declaration, must swear positively, that such a one is tenant in possession; that he read the indorsement to him; and that he acquainted him with the contents thereof; upon this affidavit, the plaintiff may move the court for judgment against the *casual ejector*, which is always granted, unless the tenant, in due time, enter into the common rule to confess *lease, entry, and ouster*.

6. In the king's bench, if the premises are situate in *London* or *Middlesex*, and the notice requires the tenant to appear

appear on the first day, or within the first four days of the next term, the plaintiff should regularly move for judgment against the casual ejector in the beginning of that term, and then the tenant must appear within four days inclusive after the motion, or the plaintiff will be intitled to judgment. If, however, the motion be deferred till the latter end of the term, the court will order the tenant to appear in two or three days, and some times immediately, that the plaintiff may proceed to trial at the sitting after term; though, if the motion be not made before the last four days of the term, the tenant need not appear until two days before the effoin day of the subsequent term, and should the notice, in such case, require the tenant to appear in the next term generally, the tenant hath the whole of that term to appear in.

7. In the common pleas, if the premisses are situate in *London* or *Middlesex*, and the tenant has notice to appear in the beginning of the term, the plaintiff cannot take any thing by his motion for judgment against the casual ejector for default of appearance, unless such motion be made within one week next after the first day of every *Michaelmas* and *Easter* term, and within four days next after the first day of every *Hilary* and *Trinity* term; but it has been holden, that this rule does not extend to the case of a *vacant possession*, under the statute 4 *Geo. 2. c. 28*.

8. In country causes, though the declaration be delivered before the effoin day of *Easter* or *Michaelmas* term, yet the tenant, in both courts, is allowed till four days after the next issuable (that is *Hilary* or *Trinity*) term, to appear; and if the cause arise in *Cumberland*, or in any other county where the assizes are held but once a year, the tenant is not compellable to appear till four days after the term preceding the assizes. But, in the *king's bench*, the plaintiff must move for judgment the same term in which the tenant has notice to appear, though the practice is different in the *common pleas*, for there he may move for judgment at any time during the next issuable term.

9. By 11 *Geo. 2. c. 19*. "The tenant must give notice to his landlord of any declaration in ejectment served on him, under penalty of three years rent." But this statute only extends to cases where the ejectment is on a title *adverse* to that of his landlord; and not to cases where it is brought by the *mortgagee*, to be put into possession of the mortgaged

Buckley v.
Buckley, 1 Term
Rep. 647.

mortgaged premises, without disturbing the lessee's possession.

4 Burr. 1996.

10. Where the tenant does not give notice to his landlord of the service of the declaration, and there is judgment against the *casual ejector*, the court will set aside the judgment, and order the tenant to pay all costs to the lessor of the plaintiff, on the landlord's entering into the usual rule to try the title: OR the landlord may bring a *writ of error*, which operates as a *superfedeas* of the proceedings, under the statute 11 Geo. 2. c. 19. and stay the proceedings.

2 Stra. 1241.

1 Term Rep. 647.

11. A tenant, to a mortgagee, who does not give him notice of an ejectment, brought by the mortgagee, to enforce an attornment, is not liable to the penalties of 11 Geo. 2. c. 19. s. 12. for secreting ejectments.

VII. Defence and Plea.

Runnington's
Ejectments, 70.
Lilly's Prac.
Reg. 499.
Comb. 209.

1. By the common law, no person is permitted to defend in ejectment, unless he be *tenant*, and is, or hath been in possession, or receipt of the rent; because it is an act of *champerty* for any person to interpose and cover the possession with his title; and if the party would make any person defendant with another, who was not concerned in the possession of the tenements; this was a mischief at the common law; because, if the plaintiff recover against one of the defendants, the stranger had no remedy for his costs; but this is remedied by 8 & 9 Will. 3. c. 10. whereby costs are given to such strangers, unless the judge certifies, immediately on the trial, that the party had *probable cause* for making him defendant.

Salk. 257.
7 Mod. 70.
3 Burr. 1301.

2. The *tenant in possession*, must apply to the court to be made defendant in the room of the *casual ejector*. This is done by rule of court, on condition of his confessing *lease, entry, and ouster*.

Salk. 259.

3. If the tenant do not appear, and enter into THE COMMON RULE, the plaintiff must be nonsuited; and then, upon the return of the *posse*, judgment is given against the *casual ejector*; and it is indorsed, that the nonsuit was for not confessing *lease, entry, and ouster*: Upon this the plaintiff is intitled to have his costs taxed against the defendant; and if they are not paid, AN ATTACHMENT will go.

Salk. 246.
Ld. Ray. 751.
7 Mod. 39.

4. It was formerly holden, that the confession of *lease, entry, and ouster*, was not a confession of any *entry* sufficient to make out the plaintiff's title, when an entry was necessary thereto;

thereto; as where an entry was necessary to avoid a *fine*, or to take advantage of a *condition broken*; and, in the case of an ejectment brought by one *tenant in common* against his fellow, the plaintiff was, notwithstanding the rule, put to the proof of an *actual ouster*. But now, though there must be an *actual entry* to avoid A FINE, and the action upon that entry must be commenced within a year afterwards; (a) yet in the other two, and in all other cases, the confession of lease, entry, and ouster, is deemed sufficient.

3 Burr. 1897.

(a) By 4 & 5 Anne, c. 16. s. 16. ante pl.

Ld. Ray. 750.

3 Burr. 1897.

5. If there are several defendants, and some of them do not appear and confess *lease, entry, and ouster*, a verdict will be taken for them, and the plaintiff shall have judgment against the *casual ejector*, for the lands of which these defendants were in possession.

1 Ld. Ray. 729.

1 Barnes 118.

6. By 11 Geo. 2. c. 19. "Where a declaration is served on the tenant, the landlord may, by leave of the court, make himself *defendant* with the tenant in possession, in case he appears. But in case such tenant shall refuse or neglect to appear, judgment shall be signed against the *casual ejector*; and if the landlord shall desire to appear by himself, and shall consent to enter into the like rule as the tenant, in case he had appeared, ought to have done; the court shall permit him so to do, and order a stay of execution upon such judgment till further orders."

7. The landlord has, under this statute, a *right* to be made defendant if he applies; but it is *optional* in him to do so or not; the court, however, has no jurisdiction to admit any person but *the landlord* to defend instead of the tenant; but it was said, by Lord MANSFIELD, that it is not necessary that the person applying to be made defendant, should be *actual landlord*, but that it is sufficient if he have a *privity of interest* in the lands; and therefore a *purchaser of a reversion*, which seemed to be a pretended title, and where no rent had ever been paid, was held to be admissible as a defendant. So it should seem, that a *mortgagee out of possession*, may be admitted to defend on the tenant's refusal. And if the person who wishes to defend, be neither *tenant* nor *landlord*, he must move the court on an affidavit of the fact to be made defendant instead of the *casual ejector*; but this can only be done with the tenant's consent.

Salk. 256.

Barnes 193.

3 Burr. 1299.

2 Espinasse's Digest 166.

Stiles 368.

8. Where several ejectments are brought for the *same premises*, upon the *same demise*, the court, on motion or a judge at his chambers, will order them to be CONSOLIDATED.

Run. Eject. 74.

2 Burr. 756.

9. On the landlord being made a defendant, under 11 Geo. 2. c. 19. on non-appearance of the tenant, the court will stay execution against the casual ejector.

1 Black Rep. 257.

10. *Qu.* Whether one claiming, as lord by escheat, shall be admitted defendant in an ejectment brought against the tenant in possession, by the lessee of one claiming as heir at law.

Norris v. Dan-
caster 3 Term
Rep. 783.
Lovelock v.
Dancaster,
4 Term Rep.
122.

11. The court will not permit a *cestui que trust*, but they will permit a *devisee in trust*, not having been in possession, to be made defendant, instead of the tenant, as landlord, under 11 Geo. 2. c. 19. s. 13.; and they will also permit the *heir at law*, or *remainder-man*, claiming under the same title.

Run. Eject. 105.

12. AS TO THE PLEA in this action, the general rule is, that whatsoever bars the *right of entry*, is a bar to the plaintiff's title; therefore the plaintiff must prove *seisin* within *twenty years* in himself or his ancestors; or he must prove *seisin* in a third person, of a particular estate in the land, and that he claimed within twenty years after the reversion accrued; or that he was an infant, feme-covert, *non compos*, imprisoned, or beyond the sea at the time when the title accrued, and that he claimed within twenty years after these disabilities ceased. Hence it is, that the defendant need not *plead* the statute of limitation, as he must do in other actions.

1 Burr. 11.

Run. Eject. 105.

13. A fine and non-claim, or a *discent cast*, which take away the entry, are good pleas in this action.

5 Co. 105.

9 Co. 77.

14. So an *accord*, with *satisfaction*, is a good plea in ejectment, for it is an action of *trespass* in its nature.

2 Burr. 1046.
Ld. Ray. 1418.

15. *Ancient demesne*, is likewise a good plea in ejectment; but leave must be had of the court to plead it: and the affidavit to obtain such leave, must shew that the lands are holden of a *manor*, which manor is *ancient demesne*.

Carth. 180.

16. But these pleas are now seldom pleaded; for, according to the modern practice in ejectment, the defendant, if he appear, is generally bound, by the consent rule, to plead the *general issue* of NOT GUILTY.

Yelv. 180.
Cro. Car. 261.

17. If the plaintiff, *after issue* and *before trial*, enter into part of the premises, the defendant may, at the assizes, plead this as a plea *puis darrien continuance* in BAR to the plaintiff's action; but it is in the discretion of the judges whether they will receive it or not.

1 Mod. 252.

18. The death of the nominal plaintiff cannot be pleaded in abatement of an ejectment; for while there is a man

man of the name in *rerum natura*, the court will intend he was the plaintiff.

19. The court will give leave to plead to the jurisdiction, before judgment *nisi* against the casual ejector. 1 Black. Rep. 197.

VIII. Evidence and Verdict.

1. IN EJECTMENT, the plaintiff must recover, by the strength of his own title, not by the weakness of his adversary's; for whom *possession* is a good title. The plaintiff, therefore, must always shew a good and sufficient title in himself, or he cannot recover; so that it will be sufficient for the defendant in ejectment to prove a title *out* of the lessor of the plaintiff, though he can prove no title *in* himself; but if he prove a title out of the lessor of the plaintiff, it must be a good and subsisting one elsewhere. 4 Burr. 2484. Bull. N. P. 100.

2. A lease, under a power, is not sufficient evidence of possession; for a surrender of such lease might and ought to be presumed at the trial. Bull. N. P. 112. 1 Burr. 126.

3. On an ejectment for *mines*, evidence of being lord of a manor, is not sufficient proof of possession; it being necessary to shew an actual possession. Run. Eject. 113.

4. The defendant, notwithstanding his confession of *lease*, *entry*, and *ouster*, may deny that he is in possession of the premises for which the plaintiff contends, and put him to prove it; which, if he cannot do, he must be nonsuited. Run. Eject. 113.

5. In an ejectment for a rectory, if the plaintiff prove the *taking* of the tithes only, and not an *entry* into the glebe, he shall be nonsuited; for where several matters are necessary to give a compleat title, the plaintiff must prove all these requisites. Latch. 62.

6. In an ejectment for a rectory, the plaintiff ought to prove that his lessor was admitted, instituted, and inducted; that he had read the thirty-nine articles; that he had declared his assent and consent to all things contained in the book of Common Prayer; but he need not prove a title in his patron. 1 Sid. 220. Bull. N. P. 105. 2 Black. Rep. 1228.

7. Ejectment being an action of *trespass*, every part of the declaration must be proved; therefore, if it be brought for a house in *Peter-street*, in the *ward of Cheap*, and it appear to be in the *ward of Farringdon*, and that no part of *Peter-street* is in the *ward of Cheap*, the plaintiff must be nonsuited. 1 Stra. 595.

Packer v.
Walker, 3 Will.
25.

Bull. N. P. 96.

Doe on the de-
mise of Cheney
v. Batten.
Cowper 243.

Cowp. 247.

Bull. N. P. 96.

Run. Eject. 117.

Burt v. Barlow,
Easter Term,
19 Geo. 3.
4 Burr. 2058.

Burr. 1897.

8. If a landlord bring ejectment for lands demised *at will*, the tenant, by construction of law, becomes tenant from *year to year*, and the plaintiff must prove "that half a year's previous notice was given to the tenant to quit, "or to his executors, in case of his death," or he shall be nonsuited at the trial. But where *the tenant* has attorned to some other person, or done some other act, *disclaiming* to hold *as tenant* to the landlord; in such case no notice is necessary.

9. If a landlord give a regular notice to quit at *Michaelmas*, and, on ejectment brought, it appear in evidence, that he accepted rent from the tenant from *Michaelmas* to *Christmas*; this does not of itself amount to a waiver of the notice, but it shall be left to the jury *quo animo* he received it; as it might be a waiver only of the double rent to which the lessor was intitled, or he might have taken it under the terms, that it should not be a waiver of the notice.

10. But on an ejectment on 4 Geo. 2. c. 28. for non payment of rent, if it appear that the landlord accepted rent after the time of the demise laid, this is a waiver of the right of recovery; for it is a *penalty*, and by the acceptance of rent the penalty is waived.

11. So also on a proviso to re-enter for a forfeiture, if the lessor bring covenant for half a year's rent, subsequent to the demise laid in the ejectment, it is a waiver of the right of entry for the forfeiture.

12. Where the lessor claims, as heir at law of *A.* it is sufficient to prove, that *A.* was in possession, and that the lessor is his heir; for it shall be intended, *prima facie*, that *A.* was seised in fee till the contrary appear.

13. This action sometimes turns on the question of *marriage*.—A marriage, in *fact*, may be proved either by a copy of the register, or by *viva voce* evidence of the ceremony, corroborated by circumstances, identifying the parties. But, in this action, it is not necessary to prove a marriage in *fact*: a *reputed marriage* will be sufficient; and that may be substantiated by cohabitation, reputation, and other circumstances from which a marriage may be inferred. With respect to *cohabitation*, it is the practice to admit evidence of what the parties have been heard to say, as to their being or not being married.

14. The confession of lease, entry, and ouster, is sufficient to bar a non-suit for want of proof of actual ouster.

15. One tenant in common cannot set up an outstanding unsatisfied term in bar to an ejectment for a moiety by another tenant in common. 1TermRep.759.

16. Where a trust term is a mere matter of form, and the deeds mere muniments of another's estate, it shall not be set up against the real owner. Ibid.

17. A mortgagee cannot set up the title of a third person against his mortgagor in ejectment; nor can a tenant set up the title of a third person to bar his own lessor. Ibid.

18. In an ejectment brought by Mr. *Duncombe*, he could not prove the time when the term commenced; and the tenant proving it different from the time to quit mentioned in the notice, the plaintiff was nonsuited. 1TermRep.161.

19. The trustees of a public turnpike act, which empowers them to erect toll-houses, and mortgage the tolls, and which declares that there shall be no priority among the creditors, have no authority to mortgage the toll-houses or gates; but if, in fact, they have made such a mortgage, and an EJECTMENT is brought against them by the mortgagee, they are not stopped by their deed from insisting that the act gives them no such power. Mytton v. Gilbert, 2 Term Rep. 169.

20. Declarations, by tenants, are admissible evidence after their death, to shew that a certain piece of land is parcel of the estate which they occupied; and proofs that they exercised acts of ownership in it, not repelled by contrary evidence, is decisive. Davis v. Pearce, 2TermRep. 53.

21. Where the plaintiff claimed as devisee in remainder, under a will twenty-seven years before, under which there was no possession, declarations by the tenant who was in possession at that time that he held as tenant to the devisor, are admissible evidence to prove seisin in the devisor. Holloway v. Raikes, 2TermRep. 55.

22. If there be an agreement before marriage, that a settlement shall be made of the wife's estate, reserving to her a power of disposing of it, which agreement is signed by the intended husband and wife, but not sealed; and, before the marriage, the wife disposes of it to the husband who survives her, and devises the estate by will; the title of his devisee is such a doubtful equity, as cannot be set up in an EJECTMENT against the title of the wife's heir at law. Hodson v. Staple 2TermRep.684.

23. A satisfied term may be presumed to be surrendered, but an unsatisfied term, raised for the purpose of securing an annuity, during the life of the annuitant, cannot; and may be set up as a bar to the heir at law, even though he claim only subject to the charge. Ibid.

Jordan v. Ward,
Term Rep. in
Com. Pleas 97.

24. In ejectment: tenant for life makes a lease for years, to commence on a certain day, and dies (before the expiration of the lease) in the middle of the year. The remainder-man receives rent from the lessee (who continues in possession, but not under a fresh lease) for two years together, on the days of payment mentioned in the lease. This is *evidence* from which the court will presume an agreement between the remainder-man and the lessee, that the lessee should continue to hold from the day, and according to the term of the original demise: so that notice to quit ending on that day, is proper.

2 Espinasse's
Digest 215.

Carruthers v.
Dendien, Bull.
N. P. 106.

25. As to THE VERDICT, it is a rule that the plaintiff, in ejectment, shall always recover according to the title which he makes out, though not consistent with that stated in the declaration; as where the plaintiff having a title but to *five* years, declared for *seven*; he may, notwithstanding this, recover according to his title.

Cro. Eliz. 186.

26. If the declaration, in ejectment, go for several things, and there is a general verdict, though the declaration is bad as to part, yet the plaintiff may recover for the remainder.

Dyer. 47.

27. In a recovery in ejectment of one hundred acres of land, twenty of pasture, &c. without mention of any *house* or *garden*; the plaintiff shall nevertheless recover all the *erections* thereon.

Crompton's
Practice 207.

28. But as *the verdict* is the ground of *the judgment*, it ought not to be entered for more land, or different parcels, than the defendant was found guilty of.

IX. Judgment and Costs.

1 Burr. 114;
2 Burr. 60.

1. THE JUDGMENT in ejectment, is a recovery of *the possession*, (not of the *seisin* or *freehold*) without prejudice to *the right*, as it may afterwards appear between the parties. He who *enters* under it, in truth and substance, can only be possessed according to right *prout lex postulat*. If he have a freehold, he is in as a freeholder; if he have a chattel actual, he is in as a termor; and in respect of the freehold, his possession enures according to his right. If he have no title, he is in as a trespassor; and, without any re-entry by the true owner, is liable to account for the profits.

Run. Eject. 126.

1 Str. 531.

2. The judgment in ejectment, is either against the *casual ejector* by default, or against *the tenant* upon a verdict; the former is generally before, the latter is always after an appearance;

pearance; but the *casual ejector* can in no case confess a judgment.

3. If judgment be signed by default against the casual ejector, the landlord may move to set it aside, if the tenant have not given him the ejectment; and the court will make the tenant pay the costs; for the possession ought not to be changed, where there has been no trial or opportunity of trial. 4 Burr. 1997.

4. If judgment is regularly signed, but without loss of trial, it may be set aside, on payment of costs, and taking notice of trial. Stra. 975.

5. When the landlord is admitted to defend instead of the tenant, the judgment is consequently entered against the *casual ejector*, with a stay of execution till further order; if the landlord be afterwards non-suited for not confessing lease, entry, and ouster, or if a verdict be given against him upon the trial, the plaintiff must move for leave to take out execution against the *casual ejector*, and the day of shewing cause against the motion, is the proper time for the landlord to make his stand against the plaintiff's taking out execution on this judgment, and getting into possession. Barnes 182.
2 Burr. 757.

6. The plaintiff cannot have judgment against the casual ejector, till common bail is filed. Gilbert 23.

7. When the plaintiff in ejectment is non-suited at the trial for want of the defendant's confessing lease, entry, and ouster, he is not intitled to sign judgment against the *casual ejector*, till the *postea* comes in on the day in bank. Doe v. Copeland 2 Term Rep. 779.

8. As to costs in ejectment—If an infant deliver a declaration to the defendant, some friend or guardian must be set up as plaintiff to answer the defendant's costs. But if such person die insolvent, so that the defendant has no remedy by this rule, the infant himself must answer for the costs; because the rule was entered into for the defendant's benefit: even infants must not disturb the possession of others by unlawful entries, without being punished with costs. So also the defendant may require security to be given for costs, if an ejectment be brought upon the demise of a person residing in the island of *Antigua*, or in *Ireland*. Stra. 694. 932.
Hardw. 56.
1 Wils. 130.

9. If an action for mesne profits be brought by the nominal plaintiff, after a recovery in ejectment, the court will stay proceedings until security be given for the costs. Sayer's Law of Costs 153.
Pike v. Caben, Sayer 154.
2 Burr. 1177.

10. But where it appears that the title of the lessor of the plaintiff is at an end, the court will not stay the proceedings 2 Stra. 1056.

on the motion of the defendant, because he may proceed for damages and costs, but they will oblige the plaintiff to find security.

2 Stra. 516.

11. If there is an ejectment against several, and the plaintiff is non-suited, he may pay the costs of the non-suit to which of the defendants he pleases.

12. By 8 & 9 Will. 3. c. 11. "In ejectment against several, if any one or more is acquitted by verdict, he shall recover his costs against the plaintiff, unless the judge shall certify, in open court, that there was good cause for making such person a defendant."

13. In all cases, if it appear upon the pleadings, that the freehold or title was in question, there needs no certificate to intitle the plaintiff to full costs, though the damages are under forty shillings.

2 Black. Rep. 763.

14. A new defendant may give rule to reply, and *non pros* the plaintiff; but can have no costs, unless the lessor of the plaintiff has joined in the rule by consent.

2 Black. Rep. 904. 1158. 1180.

15. The court will stay proceedings until the costs of a former ejectment be paid; the lessor of the plaintiff, in the former ejectment, never entering into the consent rule.

Doe on the demise of Silly v. Alston, 1 Term Rep. 490.

16. Where the lessor of the plaintiff had abandoned his suit in another court, and brought a fresh ejectment in the king's bench, the court refused an application, requiring him to give security for the costs: For there are only three instances where the court will interfere to oblige the plaintiff to give security for costs—FIRST, when an *infant* sues; in which case his *prochein ami*, or guardian or attorney, must give security—SECONDLY, when the plaintiff resides abroad—THIRDLY, when there has been a former ejectment; in which case, the court will stay proceedings, in the second ejectment, till the costs of the former are paid.

X. Of Execution; and Writ of Error.

2 Sid. 156. 1 Roll Rep. 213. Noy 71. Palm. 263. 2 Crompt. Pract. 212.

1. THE plaintiff in ejectment having obtained and signed his judgment, may, without any writ of execution, enter the premises recovered at his own peril; but he may more securely be put into possession, by suing out an *habere facias possessionem*; if he neglect, however, to sue out execution within a year and a day after judgment, he must, as in other cases, bring a *scire facias*, to review the judgment, and the court will award a restitution, *quia erroneè emanavit*.

2. If

2. If the plaintiff die within the year and the day, his executors cannot take out execution without a *scire facias*, because they are not parties to the judgment; although if an execution be properly sued out in the life-time of the testator, the sheriff may execute it after his death; for it is an authority from the court, and not from the party. Run. Eject. 153.

3. Where the lessor of the plaintiff died in the vacation, and the writ of possession was taken out after his death, but was *tested* of the last day of the preceding term, and so overreached the time of his death, the writ was held to be regular. Doe on the demise of Beyer, v. Roe. 4 Burr. 1970.

4. If the plaintiff hath judgment with a stay of execution for a year, he may, after the year, take out his execution without a *scire facias*; but he ought to move the court for a *scire facias*, lest the execution should be defeated *quia erroneè emanavit*. 6 Mod. 288.

5. If the defendant bring a writ of error, and thereby hinder the plaintiff from taking his execution within the year, and the plaintiff in error is nonsuited or the judgment affirmed, the defendant in error may proceed to execution after the year without a *scire facias*; because the writ of error was a *superfedeas* to the execution and the plaintiff must acquiesce till he hear the judgment above. 1 Keb. 785.
5 Co. 88. Cro. Eliz 416 6 Mod. 288. 2 Inst. 471.

6. The words of the writ of execution being "*quod habere facias possessionem*," there must be a full and actual possession given by the sheriff, and consequently all power necessary for this end must be given to him; therefore if the recovery be of a house, the sheriff may justify breaking open the door, if he be denied entrance by the tenant, because the writ cannot otherwise be executed. 5 Co. 91.

7. If the plaintiff recover several messuages in the possession of different persons, the sheriff must go to each house and deliver the possession thereof, which is done by turning the tenants out of possession of each of the houses. 1 Roll. Abr. 886.

8. In taking possession under this writ, the practice is for the plaintiff to give the sheriff security to indemnify him from the defendants, and then for the sheriff to give execution of what the plaintiff demands; but if the plaintiff take more than he has recovered and shewn title to, the court will set it right in a summary way. 1 Burr. 626.
5 Burr. 2673.

9. The writ of execution is only returnable at the election of the plaintiff, for the court, at the instance of the defendant, will not direct the writ to be returned; and this 2 Keb. 245.
Palm. 289.
6 Mod. 27.

seems to be left to the choice of the plaintiff, that he may do what is most to his advantage, in order to have the full benefit of his judgment; and the best way to effect that, is to suffer him to renew the execution at his pleasure, until a full execution be had. But if the writ be once returned, though not filed, no new *habere facias* shall issue.

Crompt. Pract.
218.

6 Mod. 27.

10. If the officer be disturbed in the execution of the writ, on an affidavit, the court will grant an attachment against the party, whether he be the defendant or a stranger; and the process is not understood to be *executed*, nor the execution compleat, until the sheriff and his officers are gone, and the plaintiff left in *quiet possession*.

1 Keble, 779,
785.

11. But after possession given, either on the *habere facias*, or by the agreement of the parties, the law seems to make a difference where the plaintiff is turned out of possession by the defendant, and where by a stranger. When it is done by the defendant himself, the plaintiff may have either a new *habere facias* or an attachment, because the defendant shall never, by his own act, keep the possession which the plaintiff hath recovered from him by due course of law. But where a stranger turns the plaintiff out of possession after execution fully executed, the plaintiff is put to his new action, or to an indictment for the *forcibly entry*, where the force will be punished. The reason is, that the title was never tried between the plaintiff and the stranger, who may claim the land by a title paramount the plaintiff, or he may come in under him; and then the recovery and execution in the former action ought not to hinder the stranger from keeping that possession which he may have a right to. If the law were otherwise, the plaintiff might by virtue of a new *habere facias*, turn out even his own tenants, who come in after the execution is executed, whereas the possession was given him only against the defendant in the action, and not against others who were not parties to the suit.

NO EXECUTION
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12. AS TO WRIT OF ERROR, it is enacted by 16th 17 Car. 2. c. 8. "that no execution shall be stayed by writ of error, upon any judgment after verdict in *ejectment*, unless the plaintiff in error shall become bound in a reasonable sum to pay the plaintiff in *ejectment* all such costs, damages, and sums of money, as shall be awarded to such plaintiff upon the judgment being affirmed, or on a nonsuit, or discontinuance had; and in case of affirmance, discontinuance, or nonsuit, the court may issue a writ to enquire as well of the *mesne profits*, as of the damages by any *waste* committed after the first judgment,

"ment, and are thereupon to give judgment and award execution for the same, and also for costs of suit."

13. The defendant on becoming bound in double the rent, which is the usual sum named, is entitled to his writ of error, although the plaintiff produce an affidavit that the defendant is insolvent, and that the land was mortgaged for more than it was worth. 4 Burr. 2510.

14. If the defendant in ejectment bring a writ of error in parliament the court will oblige him to enter into a rule not to commit waste or destruction during the pendency of the writ. 3 Burr. 1823.

15. A writ of error cannot be sued out in the name of the casual ejector. 2 Burr. 757.

16. Nothing can be assigned for error which will make it necessary to go again into the title of the land. Hobart, 5.

17. If judgment be given against the casual ejector, for want of the real defendant confessing lease, entry, and ouster, he cannot bring a writ of error to reverse a judgment to which he was not a party, and if he bring such writ in the name of the casual ejector, the casual ejector being a friend to the plaintiff's lessor, he may either release the errors, or move the court for a non pros, which they will order to be entered. Ld. C. B. Gilbert's Law of Ejectments, p. 23.

XI. Of the Action for the Mesne Profits.

1. AN EJECTMENT being a feigned action brought against a nominal defendant, and generally on a supposed ouster, is obviously not a proper action to recover the mesne profits, which are wholly dependant on facts done by a real tenant, respecting actual profits received by him. In the one case, therefore, the damages are merely nominal, in the other they are such as the plaintiff has sustained by a real injury; for the verdict in ejectment having established the right of the plaintiff from the time that his title accrued, the defendant is a trespasser, and the plaintiff entitled to recover from him damages, for his unjust possession, equal to the value of the lands during that time. Runington on Eject. 164.

2. An action for the mesne profits, therefore, is consequent to the recovery in ejectment; and it is an action of trespass vi et armis brought by the lessor of the plaintiff, in his own name or in the name of the nominal lessee, (for it may be brought in either shape) against the tenant in possession, to recover the value of profits unjustly received by the latter, in consequence of the ouster complained of in the ejectment. 2 Burr. 668.

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Dacosta v. Al-
kin, Hilary
Term, 4 Geo. 2.

Skin. 247. Salk.
260. 2 Burr.
665. Bull.
N. P. 89.

Bull. N. P. 87.
2 Burr. 667. 1
Sid. 239. 2
Espinasse's Dig.
222.

Stanynought, v.
Cofins 2 Barnes,
367.

2 Espinasse's
Digest of action,
p. 223.

Buller, N. P. 89.

Goodtitle, v.
Coombs, 3 Will.
118, against the
opinion of Littleton and Ld. Coke. Co. Lit. 199.

It is usually brought by the lessor of the plaintiff in his own name; and in that case on proving a good title in himself, and an actual ouster and perception of the profits by the defendant antecedent to *the demise* and *ouster* in ejectment, he will recover damages for those profits: but they are seldom an object of litigation, as *the demise* and *ouster* in ejectment are generally laid soon after the time, when the lessor's title accrued.

3. If the action be brought in the name of the *nominal lessee*, for it is now settled that there is no distinction between a judgment in ejectment upon a *verdict*, and a judgment by *default*, the court, upon application, will stay the suit till security be given for answering the *costs*; but they will not permit such nominal plaintiff to release the action, and therefore his release has been set aside, as a contempt of court.

4. The plaintiff is not bound to claim the *mesne profits*, only from the time of the demise, but if he go, as he may, for profits received antecedent to the demise laid, the defendant is at liberty to *controvert his title*, which otherwise he cannot do, *the record* against him of the recovery in ejectment being conclusive evidence of the plaintiff's title from that time, and cannot be controverted; in such case it is sufficient to produce the judgment in ejectment and the writ of possession executed.

5. The plaintiff also in an action for *mesne profits* against a *precedent occupier*, must shew and prove his title; for the recovery in ejectment is no evidence as against *him*, he being a stranger to the record; and therefore in this case the plaintiff will be entitled to recover the *mesne profits*, only from the time he can prove himself to have been in *actual possession*; so that if a man make his will and die, the devisee will not be entitled to the profits till he has made an *actual entry*; but it is said that when the plaintiff has once made an actual entry, that it will have relation to the time of his title accrued, and enable him to recover the *mesne profits* from that time: against this retrospective relation, however the defendant may plead the statute of *limitations*, and so protect himself from all the *mesne profits*, except for the last *six years*.

6. A *tenant in common*, who has recovered in ejectment against his co-tenant in common may maintain an action of trespass for the *mesne profits*.

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7. The defendant cannot *pay money into court* in an action for *mesne profits* after a recovery in ejectment by default against the *casual ejector*; for the action is for a *tortious occupation* from the time the tenant had notice of the title of the lessor of the plaintiff; and where the action is brought under these circumstances it is usual for the plaintiff to declare for, and recover the *costs* in ejectment, as consequential damages, as well as the *mesne profits*. 2 Will. 115. Bul. N. P. 88.

8. If the defendant bring a writ of error on the verdict against him in ejectment, and enter into a recognisance pursuant to the statute 16 & 17 Car. 2. c. 8. to pay costs, the plaintiff, on judgment in his favour on the writ of error, need not bring a *scire facias* or action of *debt* on the recognisance, but may sue out an *elegit* or *writ of enquiry*, to recover the *mesne profits* since the first judgment in ejectment. Short v. Heath. Mich. Term, 12 Geo. 2. Crompt. Prac. 223.

9. The declaration in this action for *mesne profits*, must expressly state the several parcels of land, &c. from which the profits arose, or the defendant may plead THE COMMON BAR. 2 Crompt. Pract. 223.

10. In this action nothing but the judgment in ejectment and execution thereon, and the value of the *mesne profits* can be given in evidence, and not the *title*, for otherwise trials would be infinite; but where the judgment is against the *tenant in possession*, and the action is brought against *him*, it seems sufficient to produce an official copy of the judgment without proving the writ of execution executed, because by entering into the rule to confess the defendant is stopped, both as to the lessor and lessee: so that either may maintain the action without proving *actual entry*. But where the judgment is against the *casual ejector*, and so no rule entered into, the lessor shall not maintain trespass without an *actual entry*, and therefore ought to prove the writ of possession executed. 2 Crompt. Pract. 223. Thap v. Frv, Strange's Bull. N. P. 87. 2 Espinasse's Dig. 223. 2 Crompton's Practice, 222.

11. The jury in estimating the value of the *mesne profits*, are not confined to the mere *rent* of the premises; but may give whatever damages they think proper, unless the statute of limitations be pleaded and then they cannot look beyond the last six years. Impey's Instructor Clericalis, 4th Edit. 504. 3 Will. 121. 2 Burr. 267. Buller's Nisi Prius, 88. Impey's Inst. Cler. 504.

XII. Of Second Ejectment.

1. THE plaintiff may bring a second ejectment for the same lands, but unless it appear to the court that there is 1180, 1704. 2 Stra. 1152. Onslow's good Salk. 255. 1 Stra. 554, 681. 2 Black. Rep. N. P. 104.

good ground for it, they will stay proceedings until the costs of the first are paid.

2. The court of chancery will not grant a bill of peace to prevent any number of ejectments, for every termor may have an ejectment; and every ejectment supposes a new demise, and the costs in ejectment are a recompence for the trouble and expence to which the possessor is put; so that by this action a man may try his title to an estate as often as he pleases.

XIII. Practice and Precedents.

HOLDFAST on the Demise of A. B. against LETGOE.

K. B.

Affidavit of the service of a declaration in ejectment.

To be engrossed on treble penny sheet of paper.

1. B. R. of, &c. gentleman, maketh oath that he this deponent did on the day of last serve C. D. the tenant in possession of the premises in question in this cause with the declaration hereunto annexed, and the notice there under written, by delivering unto him the said C. D. a true copy of the said declaration and notice, and at the same time reading over to him the said notice, and acquainting him with the contents or purport of the said declaration and notice.

SWORN, &c.

B. R.

Judgment against casual ejector.

2. On the ground of this *affidavit*, the plaintiff moves for a rule for judgment against the *casual ejector*, which is granted, and judgment goes in consequence, unless the real defendant in due time appear and enters into the common rule.

Notice to the tenant.

3. The notice at the bottom of the declaration, if the premises lie in *London* or *Middlesex*, must be made to appear the *first* day of the *subsequent term*, and must be delivered before the *essoign* day of such term, for if made *generally*, the defendant will have the whole term to appear in.

4. If the premises in question be in any other *city* or *county* than *London* or *Middlesex*, you make your notice to appear the next term *generally*.

When the premises lie in any other county.

5. If premises lie in any other *city* or *county* than *London* or *Middlesex*, though the declaration be delivered before the *essoign* day of *Easter* or *Michaelmas* term, yet the tenant has *four days* after the end of the next issuable terms, *viz. Hilary* and

and *Trinity*, when to appear, and if a county where the *assizes* are kept once a year, the tenant has *four days* after the end of the term next preceding the *assizes* to appear.

6. As a declaration is usually delivered in the *vacation* to appear in the subsequent term, the title must be of the preceding term. The demise may be laid any day after the title accrues, and before the declaration is delivered, except a *Sunday*. NOTE: The notice to appear must be on the *first* day of the *subsequent term*.

Directions for filling up a declaration in ejectment.

Michaelmas Term, 31 Geo. 3.

7. *Middlesex*, } *A. B.* complains of *C. D.* being in the
to wit. } custody of the marshal of the *Marshalsea*
of our sovereign Lord the king, before the king himself, for
that WHEREAS *E. T.* on the day of , in
the year of the reign of our sovereign lord *George*
the Third, by the grace of God, king of *Great Britain*,
and so forth, at *Westminster*, in the county of *Middlesex*,
had demised, granted, and to farm let to the said *A.*
messuages, &c. with the appurtenances, situate, lying, and
being in the parish of *St. Clement Danes*, in the said county
of *Middlesex*. TO HAVE AND TO HOLD the said tene-
ments, with the appurtenances to the said *A. B.* and his
assigns, from the day of , then last past, to
the full end and term of years from thence next
ensuing, and fully to be complete and ended: By virtue of
which said demise, he the said *A.* entered into the said tene-
ments with the appurtenances, and was thereof possessed
until the said *C.* afterwards, (*that is to say*) on the same
day of , in the year aforesaid, with
force and arms entered into the said tenements, with the
appurtenances, in and upon the possession of the said *A.* and
ejected, drove out, and removed the said *A.* from his said
farm, during his said term not yet expired, (*and the said A.*
being so ejected, drove out, and removed) the said *C.* hitherto
hath withheld from him, and still doth withhold the pos-
session thereof, and then and there did other injuries unto
him against the peace of our said sovereign lord the king,
and to the damage of the said *A.* 30*l.* and therefore he
brings his suit, &c.

The form of a declaration by bill.

Treble penny stamp.

Michaelmas

Michaelmas Term, 31 Geo. 3.

The form of a
declaration by
original.
Treble penny
stamp.

8. *Middlesex*, } *A. B.* late of the parish of *St. Clement*
to wit, } *Danes*, in the county aforesaid, taylor,
was attached to answer *C. D.* in an action, wherefore he
the said *A. B.* entered into one messuage and one garden,
with the appurtenances, situate, lying, and being in the said
parish of *St. Clement Danes*, in the county aforesaid, which
one *E. T.* demised to the said *C.* for a term which is not yet
expired, and ejected him from his said farm, and did other
wrongs to him, to the great damage of the said *C.* and
against the peace of our sovereign lord the king: and
whereupon the said *C.* by *R. R.* his attorney complains,
That whereas the said *E. T.* on the day of ,
in the year of the reign of his present majesty, at
Westminster, in the county aforesaid, had demised to the
said *C.* the said tenements, with the appurtenances, to him
the said *C.* and his assigns. TO HAVE AND TO HOLD
the said tenements, with the appurtenances, from the
day of , then last past, to the full end and term
of years then next following, and fully to be complete
and ended: By virtue of which said demise, the said *C.*
entered into the said tenements, with the appurtenances,
and was possessed thereof; and being so possessed thereof,
the said *A.* afterwards (*that is to say*) on the same
day of , in the said year aforesaid, with force
and arms entered into the said tenements, with the appur-
tenances, which the said *E. T.* demised to the said *C.* in
manner aforesaid, for a term which is not yet expired, and
ejected the said *C.* out of his said farm; and did him other
wrongs, to the great damage of the said *C.* and against the
peace of our said sovereign lord the king, whereby the said
C. says that he is injured, and hath damage to the value of
30 *l.* and therefore he brings his suit, &c.

To Mr. I. F. the Tenant in Possession.

A notice to a
tenant in posses-
sion to be insert-
ed at the bottom
of these declara-
tions.

9. I AM informed that you are in possession, or claim title
to the premises mentioned in this declaration of *ejectment*, or
to some part thereof, and I being sued in this action as the
casual ejector, and having no claim or title to the same, do
advise you to appear the *first* day of *Michaelmas* term next,
in

in his majesty's court of *King's Bench*, at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

I am, your loving friend,

June—1791.

Richard Letgoe.

10. NOTE: You may buy printed copies of these declarations on treble penny stamped paper, at any of the law stationers; they are indorsed for delivery in the same manner as another declaration.

11. Notice of ejectment must be both fair and honest, and truly and honestly explained to the tenant in possession. Lofft's Rep. 53.

12. The notice must be to appear in the term next to that of which the declaration is entitled. Say. Rep. 49.

13. The court will not set aside the proceedings for irregularity, because the notice at the foot of the declaration is subscribed in the name of the *nominal plaintiff*, instead of the casual ejector. 3 Term Rep. 351.

14. As you must bring separate actions for as many different premises as there are tenants, each declaration to deliver must be on treble penny, agreeable to the copy thereof you keep by you, on treble penny, in order to make an affidavit of the service of the same, to obtain a rule for judgment. Say. Rep. 151.

15. If the premises are in *London* or *Middlesex*, and the notice in the declaration is to appear the *first* day of term, or within the *first four days* of the term, you may move any time within the *first four days*, and then the tenant has but *four days inclusive* to appear after motion; if moved late in the term, the tenant has *two* or *three days* to appear, but if not moved before the *four last days* of term, he has until *two days* before the *assign day* of the *subsequent term*. If the notice on the declaration is to appear *generally* the tenant has the whole term to appear in. Tenant in possession cannot appear, after time allowed for appearance by the common rule, is expired. When the tenant is to appear.

16. WHEN you move for a rule for judgment, you annex the *affidavit* to a copy of the service of the declaration on *treble penny stamp*, and give it to counsel with 10 s. 6 d. to move How to move for a rule for judgment.

Precedents in Ejectment.

move the same. It is a motion of course. The clerk of the rules files the affidavit and declaration on motion for a rule for judgment, so that you must take care to have another copy on stamp to keep by you; or if judgment should go against the casual ejector for want of the tenant's entering into a rule, you will be forced to have an office-copy of the declaration from the clerk of the rules to enable you to sign judgment.

THURSDAY next after, &c.

Rule for judgment against the casual ejector.

17. *A.* on a demise of *F.* } UNLESS the tenant in possession
 F. } of the premises in question shall
 against } appear and plead to issue on *Tuesday*
 C. } *next after, &c.* (*time tenant is to*
appear in) LET judgment be entered for the plaintiff against
the now defendant *C.* by default upon the motion of Mr.
D.—

BY THE COURT.

18.—NOTE. If plaintiff does not move for judgment the same term tenant had notice to appear, the court will not grant such rule.

Salk. 257.

19. The rule for judgment must be drawn up and taken from the officer of the clerk of the rules within two days after the end of the term in which the ejectment shall be moved, or else no rule shall be drawn up or entered in the book, nor shall any proceedings be had in such ejectment.

Michaelmas Term in the 31st Year of the Reign of King George the Third.

A rule by consent entered into by the plaintiff and defendant.

20. IT IS ORDERED, by the consent of the attornies of both parties, that *I. F.* be made defendant in the stead of the now defendant *C. D.* and do appear forthwith at the suit of the plaintiff, and file common bail, and receive a declaration in an action of *trespass and ejectment* for the premises in question in this cause, and forthwith plead thereto *Not guilty*; and, upon the trial of the issue, confess lease, entry, and ouster, and insist upon the title only, otherwise let judgment be entered for the plaintiff against the now defendant *C. D.* by default; and if upon the trial of the
issue

issue the said *I. F.* shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able further to prosecute his bill against *I. F.* then no costs shall be allowed for not further prosecuting the same; but the said *I. F.* shall pay costs to the plaintiff in that case to be taxed. AND IT IS FURTHER ORDERED, That if upon the trial of the said issue a verdict shall be given for the said *I. F.* or it shall happen that the plaintiff shall not further prosecute his said bill or any other cause than for not confessing lease, entry, and ouster, then the lessor of the plaintiff shall pay to the said *I. F.* his costs in that behalf to be adjudged.

BY THE COURT.

R. R. for the lessor of the plaintiff, }
P. P. for the defendant. }

21. GET a blank consent rule at a law-stationer's; they are not stamped; fill it up, and make the tenant, instead of the nominal defendant, the defendant therein. Write in the margin of such rule the premises mentioned in the declaration. It must be signed at bottom with the tenant's attorney's name, leaving room for the plaintiff's attorney's name over it. Ingross the plea of the *general issue*, "*Not guilty*," with the defendant's name, on a treble penny piece of stamped paper, and annex the same to the back of the rule, and leave it at one of the judge's chambers of the court where the action is brought; pay the judge's clerk in *term* 1*s.* in vacation 2*s.*

How the defendant must appear and plead to an action in ejectment by bill.

22. By original, you must in the consent-rule strike out the words "*and file common bail*" and instead of "*his bill therein*" insert "*his writ*" and instead of filing common bail, you must enter an appearance with the *filacer*.

By original.

23. If the defendant enters into the common rule to confess, &c. for so much of the tenements as are in his possession, the defendant's attorney must forthwith give the plaintiff's attorney notice in writing of the tenements so in his possession.

Regula Generalis
 Trinity Term,
 15 Car. 2.

K. B.

A. on the demise of
F.
 against
C.

A notice of the premises the defendant defends for.

S I R,

24. TAKE notice that I defend title for a messuage and garden, with the appurtenances, situate in the parish of *St.*

N

Clement

Precedents in Ejectment.

Clement Danes, in the county of *Middlesex*, now in possession of the said *I. F.* or his under-tenant. DATED the day of _____, 1791.

To Mr. R. R.
the plaintiff's attorney,
These,

Your's, &c.
P. P.
defendant's attorney.

How to defend
when not in
possession.

25. NOTE, If a person claim *title* to premises which he would defend, and is not in *possession* of the same, he must move the court, on affidavit of the fact, to be made defendant instead of the nominal defendant. This must be with the consent of the tenant in possession, unless such person is landlord thereof.

Steps to be taken
by the plaintiff's
attorney to draw
up the consent-
rule in order to
come to issue.

26. WHEN the rule for judgment is out, you search at the *four* judge's chambers of the court, in which the cause is brought to see if the defendant has pleaded. If he has pleaded, you take away your rule and plea; sign your name as plaintiff's attorney at the bottom of the rule; carry the same to the clerk of the rules, who keeps the rule, and draws you up another consent-rule; pay him for the same 6 s. This rule you make a copy of, and annex such copy to the issue when you deliver the same to the defendant's attorney.

Plea of not
Guilty.

27. " AND the said *I. F.* by *P. P.* his attorney, comes " and defends the force and injury, when, &c. and says " that he is not guilty of the *trespass* and *ejectment* aforesaid, " as the said *John Holdfast* above complains against him, " and of this he puts himself on the country."

An issue and
record in eject-
ment by bill or
original.

28. THE issue and record in *ejectment*, when the proceedings are by *bill* or *original*, are the same as in a common action *mutatis mutandis*, only using a written form instead of the common printed form for the issue in both cases.

How to sign
judgment against
the casual ejector
for want of a
plea.

29. SEARCH at all the judge's chambers of the court the action is brought in to see if the tenant has left a plea and rule in the cause; if there is none left, draw up a rule for judgment with the clerk of the rules; pay for the same 5 s. Make *incipitur* of the declaration on a sheet of double 2 s. 6 d. *stamped paper*, and also on a *K. B.* roll; carry them with the declaration and rule to the clerk of the judgments, who signs the judgment; pay for the same 3 s. 6 d. this done you make out your *writ of possession*.

Sayer's Rep.
303.

30. THIS judgment cannot be signed until the afternoon of the fifth day after the end of the term, of which the declaration is intitled.

31. BUT

31. BUT by an order in *Michaelmas* Term, 31 *Geo. 3.* unless the rule for judgment shall be drawn up and taken away from the office of the clerk of the rules *within two days* after the end of the term in which the ejectment shall be moved, no rule shall be drawn up or entred in the THE BOOK, (a) nor shall any proceedings be had in such ejectment.

Regula Generalis Mich. Term
31 *Geo. 3.*

32. AND the said *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, &c. and says nothing in bar or preclusion of the aforefaid action of the said *John Holdfast*, but made default, whereby the said *John Holdfast* remains therein undefended, &c. THEREFORE it is considered that the said *John Holdfast* do recover against the said *E. F.* his term aforefaid yet to come of and in the said tenements, with the appurtenances; AND ALSO his damages by occasion of the *trespass* and *ejectment* aforefaid: and thereupon the said *John Holdfast* freely here in court remits to the said *E. F.* as well all such damages, costs, and charges as may be adjudged to the said *John Holdfast* in this behalf, as all judgments and executions for the said damages, costs and charges: THEREFORE let the said *E. F.* be acquitted of the said damages, costs and charges, and the said *John Holdfast* prays the writ of our said lord the king to be directed to the sheriff of the county of *Middlesex*, to cause him to have possession of his said term yet to come of and in the said tenements, with the appurtenances, and it is granted to him returnable before our lord the king at *Westminster*, on (the return you make your writ of possession of) the same day is given to the said *John Holdfast* here, &c.

The form of A POSTEA on a verdict for the plaintiff, against the casual ejector for not confessing lease, entry, and ouster.

33. NOTE. The above *postea* is not stamped; it is entered with the clerk of the *posteas*; pay for entering the same 6 *d.* You give a rule for judgment thereon as in a common case; when out you tax costs with the master on the consent-rule; make copy thereof, and serve on the defendant, and demand the costs taxed; if he refuse payment on affidavit and motion, the court will grant an attachment for his contempt,

In what manner the plaintiff shall recover his costs.

(a) The clerk of the rules shall keep a book, in which shall be entered all the rules, which, from time to time, shall be delivered out in ejectments, containing a list of the ejectments moved; in which book shall be mentioned the number of

the entry, the county in which the premises lie, the names of the nominal plaintiff (with the words "and others," if there be more than one,) and also the name of the casual ejector, *Rule Mich. 31 Geo. 3. 4. Term Rep. 1.*

which cannot be purged till he hath paid the costs. If the defendant keeps out of the way, to prevent your serving the rule and demanding the costs; on *affidavit* and motion, the court will make an order, that service and a demand on some person in the house or place where the defendant resides, shall be sufficient; and if not complied with on an affidavit of the fact and motion, the court will grant an *attachment* against the defendant.

The mode for the defendant to recover his costs on a verdict in his favour, or plaintiff being non-suited.

34. IF a verdict is given for the defendant, or the plaintiff is nonsuited for any other cause than the defendant's not confessing, &c. the defendant must get *posse* stamped, and tax costs thereon as in another action. He must sue out a *ca. sa.* against the plaintiff, and on shewing the writ under seal to the plaintiff's lessor, and serving him with a copy of the consent-rule, and demanding the costs; if he does not pay the same, the court on motion will grant an attachment against him.

The form of a judgment in ejectment by non sum informatus.

35. AND the said *E. F.* by *P. P.* his attorney, comes and defends the force and injury, when, &c. and upon this the said *John Holdfast* prays that the said *E. F.* may answer his said declaration; upon which the said attorney of the said *E. F.* says, that he is not informed by the said *E. F.* of any answer to be given by the said *E. F.* to the said *John Holdfast* in the said plaint; and he says not any thing else thereupon in *bar* or *preclusion* of the said action of the said *John Holdfast*, by which the said *John Holdfast* remains undefended upon that occasion against the said *E. F.* for which it is considered that the said *John Holdfast* recover against the said *E. F.* the possession of his said term yet to come of and in the said tenement, with the appurtenances, and his damages by occasion of the said *trespass* and *ejectment*, it is commanded to the sheriff, that, by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *John Holdfast* has sustained, as well by occasion of the said *trespass* and *ejectment*, as for his costs and charges by him about this suit expended; and that the inquisition which, &c. the sheriff do make appear to our lord the, &c. on (*the return of inquiry*) under his seal, &c. and the seals, &c. The same day is given to the said *John Holdfast*, &c. and upon this the said *John Holdfast* prays the writ of our lord the king to be directed

directed to the sheriff of the county aforesaid, to cause him to have possession of the said term yet to come of and in the said tenements, with the appurtenances; and it is granted to him returnable before our lord the king at *Westminster*, on (*the return of the writ of possession.*)

36. MIDDLESEX, to wit, *C. D.* late of *London*, taylor, was attached to answer to *A. B.* of a plea, wherefore with force and arms he broke and entered into five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of the same tenements, and for a long time withheld the said *A. B.* from the possession and occupation of the same (*he being so driven out and removed therefrom as above-said;*) and the said *C. D.* during all the time aforesaid, had and received to his own proper use, all the issues and profits of the said tenements of the yearly value of 100 *l.* and did other injuries to the said *A. B.* to the great damage of the said *A. B.* and against the peace of our sovereign lord the king, &c. And whereupon the said *A. B.* by *R. R.* his attorney, complains that the said *C. D.* on the day of _____, in the _____ year of the reign of his said present majesty, with force and arms broke and entered into the said five messuages, with the appurtenances, at *Westminster*, in the county aforesaid, and drove out and removed the said *A. B.* from the possession and occupation of the said tenements, and for a long time (*that is to say, from the _____ day of _____, in the _____ year aforesaid, until the day of suing out the original writ of the said A. B. withheld the possession and occupation of the said tenements from the said A. B. he being so driven out and removed as above-said*) and also the said *C. D.* had and received to his own use, all the issues and profits of the said tenements, of the yearly value of 100 *l.* during all the time aforesaid, and did other injuries to the said *A. B.* to his great damage, and against the peace of our said sovereign lord the king, &c. wherefore he says, he is injured, and hath damage to the value of 200 *l.* and therefore he brings his suit, &c.

The form of a declaration by original in ejectment for the *mesne profits*.

To be engrossed on a treble penny stamped sheet of paper.

37. AND the said *C. D.* by *P. P.* his attorney, comes and defends the force and injury, when, &c. and craves

N 3

oyer

A plea in abatement, that there is no such writ. Treble penny stamp.

oyer of the said writ, and it is read to him in these words, *to wit*, GEORGE the Third, &c. to the sheriff of *Middlesex*, greeting: If *A. C.* shall give you security that his suit shall be prosecuted, then put *C. D.* late of *London*, taylor, by sureties and safe pledges, that he be before us on (*the return*) wheresoever, &c. to shew wherefore with, &c. (*as in the declaration to the end*) and have you there the names of the pledges, and this writ. WITNESS ourself at *Westminster*, the day of in the year of our reign: Which being read and heard, the said *C. D.* prays judgment of the said writ; because he says that there is not any such form of a writ in an action of *trespass* and *ejectment* in the register of writs as the form aforesaid; and that the said writ varies from the said register of writs in this respect, inasmuch as it does not appear by the said writ, that the messuages therein mentioned were the messuages of the said *A. B.*; and this he is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, &c.

The form of a writ of possession by bill in ejectment.

Five sixpenny stamps.

38. GEORGE the Third, &c. to the sheriff of *Middlesex*, greeting: WHEREAS *A. B.* lately in our court before us at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *C. D.* his term yet to come, of and in one messuage, with the appurtenances, situate, lying, and being at *Westminster*, in the county aforesaid, which *I. F.* on the day of in the year of our reign, demised to the said *A. B.* for a term of years not yet expired, *to wit*, on the day of then last past, to the full end and term of five years from thence next ensuing, and fully to be complete and ended, by virtue of which demise the same *A. B.* entered upon the same tenements, with the appurtenances, and was thereof possessed until the said *C. D.* afterwards, to wit, on the same day of , in the year aforesaid, with force and arms, entered into the said tenements, with the appurtenances, and him the said *A. B.* from his farm aforesaid, the said term then and there not being expired, ejected, drove out, and removed, and him the said *A. B.* hath withheld from his possession thereof, and still doth withhold, whereof the said *C. D.* is convicted, as appears to us upon record: THEREFORE we command you, that, without delay, you cause the said *A. B.* to have his pos-

possession of his term aforesaid yet to come, of and in the tenements aforesaid, with the appurtenances, and in what manner you shall have executed this our writ, make appear to us at *Westminster*, on (*the return of the writ of possession*): And have there then this writ. WITNESS *Lloyd Lord Kenyon*, at *Westminster*, &c.

39. NOTE: This writ must be ingrossed on parchment. Make a *precipe* for the office thus.

40. MIDDLESEX, to wit, Writ of possession for *A. B.* on the demise of *F.* against *C. D.* for a messuage, with the appurtenances, situate at *Westminster*, in the county of *Middlesex*. A *precipe* for the office.

Returnable (*the return*).

R. R. attorney.

41. NOTE: Carry *the writ* and *precipe* to the officer who signs the writs in this court; pay him for signing the same 1*s.* 8*d.* sealing at the seal office 7*d.* the sheriff's warrant thereon 2*s.* 4*d.* his fees for executing the same is 1*s.* in the pound, in the yearly value of the premises, if the same does not exceed 100*l.* per annum, and 6*d.* in the pound for every 20*s.* above, and 2*s.* returning the writ. Officer's fee executing writ usually 1*l.* 1*s.*

42. If the proceedings are by *original*, the writ of possession differs only from the above in the introductory part, and in the return. It is signed by the filacer, and sealed as the above writ.

B. R.

A. B.
against
C. D.

43. *A. B.* of *£c.* the plaintiff in this cause maketh oath, that the above defendant justly owes to him this deponent the sum of pounds for a year's rent (*or as the case is*) of one messuage, &c. now in the possession of the said defendant as tenant thereof (*or as the case is*) due to this deponent at (*the time when due*) and that no sufficient distress can be had or found on the premises to satisfy the said rent: And further that he this deponent has a right and power

An affidavit of rent in arrear from the tenant, where there is no distress in order to recover in ejectment.

This affidavit to be engrossed on a treble sixpenny stamped sheet of paper.

Precedents in Ejectment.

by law to re-enter on the said messuage, &c. on non-payment of the rent aforesaid.

SWORN, &c.

A. B.

G. Lessee of J. B. against N. N.

An affidavit of a tenant's refusing to defend an ejectment in order to have the landlord admitted defendant.

And so must this affidavit.

44. *J. D. &c.* maketh oath, That he this deponent did this day of _____, by the direction of *N. B.* landlord of the premises in question in this cause, apply to *G. B.* tenant in possession of the said premises, to know whether he the said *G. B.* would appear and become defendant in his cause, or would permit the said *N. B.* to defend his title to the premises in the name of the said *G. B.* And this deponent at the same time shewed and offered to deliver unto the said *G. B.* a note undersigned by the said *N. B.* whereby the said *N. B.* promised to defend and keep the said *G. B.* harmless, from all costs and charges in this cause, but the said *G. B.* then told this deponent that he would not appear and become defendant in this cause or any-wise concern himself therein.

SWORN, &c.

J. D.

45.

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45. BILL OF COSTS for the Lessor of the Plaintiff, when the Proceedings are by Bill, upon Judgment being suffered to be entered by Default.

King's Bench.

THRUSTOUT on the demise of WESTBROOKE, Spinster, against HOLDFAST.

Michaelmas Term, 1791.

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Instructions and warrant to sue	0	2	7	0	2	7	0	4	4
Perusing title deeds, and taking abstracts from the parcels	0	0	0	0	3	4	0	6	8
Drawing declaration with notice, folio 8.	0	0	0	0	4	0	0	8	0
Engrossing same on stamp to serve and duty	0	0	3	0	1	7	0	2	11
Service on tenant	0	0	0	0	2	6	0	5	0
Affidavit thereof, duty and oath	0	2	7	0	4	1	0	5	7
Copy of declaration to answer to affidavit, and duty	0	0	3	0	1	7	0	2	11
Copy for use	0	0	0	0	1	0	0	2	0
Letters and porters	0	0	0	0	2	0	0	4	0

Hilary Term, 1791.

Instructions to move for judgment	0	0	0	0	1	3	0	2	6
Fee to counsel therewith	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Paid for rule	0	6	0	0	6	0	0	6	0
Searching whether tenant had entered into consent-rule	0	0	0	0	1	8	0	3	4
Drawing judgment	0	0	0	0	1	8	0	3	4
Engrossing the proceedings and stamps, folio 10	0	5	1	0	6	9	0	8	5
Entering same on the roll	0	0	6	0	2	2	0	3	10
Warrants and docket	0	3	0	0	3	4	0	3	8
Paid master signing judgment	0	4	2	0	4	2	0	4	2
Attending to sign same	0	0	0	0	1	8	0	3	4
Writ of <i>hab. fac. poss.</i>	0	4	10	0	8	2	0	11	6

Warrant

Bill of Costs for the PLAINTIFF in Ejectment.

					Monies out of pocket.			Agent.			Attorney.		
					£.	s.	d.	£.	s.	d.	£.	s.	d.
Warrant thereon and messenger	-				0	2	6	0	3	0	0	3	4
Attending sheriff to take possession	-				0	0	0	0	3	4	0	6	8
Paid sheriff (according to value of pre- mises, usually one shilling in the pound)	-	-	-	-	0	0	0	0	0	0	0	0	0
Term fee	-	-	-	-	0	0	0	0	2	6	0	5	0
Letters, &c.	-	-	-	-	0	0	0	0	2	0	0	4	0

46. *Bill of the Lessor of the Plaintiff's Costs upon Nonsuit for not confessing Lease, Entry, and Ouster.*

King's Bench.

Michaelmas Vacation, 1791.

DOE on the demise of WESTBROOKE, Spinster, against CHAPMAN.

N. B. This Bill of Costs runs the same as the preceding one, until

Hilary Term, 1791.

Searching if tenant has entered into consent-rule, and giving receipt for the same	-				0	0	0	0	1	8	0	3	4
Paid filing same with clerk of the rules					0	6	0	0	6	0	0	6	0
Drawing issue, folio 10	-				0	0	0	0	5	0	0	10	0
Entering same on the roll and paid	-				0	4	2	0	5	10	0	7	6
Notice of trial, copy and service	-				0	0	0	0	1	6	0	3	0

N. B. The rest of the charges for making up the record, and proceeding to trial, as in the bill in replevin, which see *ante*, p. 128.

Attending the trial, when the plaintiff was non-suited, in that defendant did not confess lease, entry, and ouster					0	0	0	0	6	8	0	13	4
Term fee	-	-	-	-	0	0	0	0	2	6	0	5	0
Porters, &c.	-	-	-	-	0	0	0	0	2	0	0	4	0

Drawing

Easter Term, 1791.

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Drawing judgment - - -	0	0	0	0	1	8	0	3	4
Engrossing the proceedings on stamps	0	5	1	0	6	9	0	8	5
Paid for rule - - -	0	6	0	0	6	0	0	6	0
Paid signing judgment - - -	0	4	2	0	4	2	0	4	2
Attending to sign same - - -	0	0	0	0	1	8	0	3	4
Drawing bill of costs and copy - - -	0	0	0	0	2	0	0	4	0
Attending to tax costs - - -	0	0	0	0	1	8	0	3	4
Copy of rule with master's allocatur thereon to serve on defendant - - -	0	0	0	0	1	0	0	2	0
Many attendances at defendant's house, in order to serve him personally - - -	0	0	0	0	6	8	0	13	4
Affidavit of service, engrossing, and duty, on motion for an attachment, and oath in court - - -	0	3	1	0	4	7	0	6	1
Instructions for Mr. GARROW to move	0	0	0	0	1	3	0	2	6
Fee to him therewith - - -	1	1	0	1	1	0	1	1	0
Attending him and court - - -	0	0	0	0	1	8	0	3	4
Paid for rule - - -	0	7	0	0	7	0	0	7	0
Paid for attachment - - -	0	16	0	0	16	0	0	16	0
Warrant and messenger - - -	0	2	6	0	3	0	0	3	6
Fee thereon - - -	0	0	0	0	3	4	0	6	8
Attending officer with instructions - - -	0	0	0	0	1	8	0	3	4
Attending the sheriff's office to get at- tachment returned, <i>non est invent.</i> and paid - - -	0	1	0	0	2	8	0	4	4
Attending crown office to file same - - -	0	0	0	0	1	8	0	3	4
Paid for <i>Al.</i> attachment - - -	0	12	0	0	12	0	0	12	0
Warrant and messenger - - -	0	2	6	0	3	0	0	3	6
Fee thereon - - -	0	0	0	0	3	4	0	6	8
Attending offices to instruct him - - -	0	0	0	0	1	8	0	3	4
Paid him his caption fee - - -	1	1	0	1	1	0	1	1	0
Attending to settle and give discharge	0	0	0	0	3	4	0	6	8
Term fee - - -	0	0	0	0	2	6	0	5	0
Letters, &c. - - -	0	0	0	0	2	0	0	4	0

47. BILL OF COSTS for the Lessor of the Plaintiff, when the Proceedings are by Original.

King's Bench,

Easter Term, 1791.

DOE on the Demise of WESTBROORE, Spinster, against ROE.

	Monies out of po. ket.	Agent.	Attorney.
	£. s. d.	£. s. d.	£. s. d.
Instructions and warrant to sue	0 2 7	0 2 7	0 4 4
Perusing title deeds, and abstracting parcels	0 0 0	0 3 4	0 6 8
Drawing precipe for original, and copy for curfitor, folio 7	0 0 0	0 3 6	0 7 0
Paid for original and fee	0 6 4	0 9 8	0 13 0
Returning and filing	0 0 0	0 1 6	0 3 0
Drawing declaration with notice, folio 8	0 0 0	0 4 0	0 8 0

N. B. The rest of the charges same
as in ejectment by bill, which see *ante*
p. 185.

48. BILL OF COSTS *for the* DEFENDANT.

King's Bench.

Hilary Term, 1791.

Instructions and warrant to defend	-	o	2	7		o	2	7		o	4	4
Copying declaration, folio 7	-	o	o	o		o	1	2		o	2	4
Searching if judgment moved for, and paid	- - - -	o	1	o		o	2	8		o	4	4
Entring appearance (if proceedings by original)	- - -	o	2	6		o	4	2		o	5	10
Filing common bail (if proceedings by bill)	- - -	o	2	9		o	4	11		o	7	2
Drawing consent rule and fair copy to sign	- - - -	o	o	o		o	2	o		o	4	o
Drawing general form, and engrossing with duty	- - -	o	o	3		o	1	7		o	2	11
										Paid		

189

The rest of the articles of charge, same as in the next above preceding bill of costs.

Common Pleas.

BARVER at the Suit of FREEMAN.

Instructions and warrant to defend	-	o	2	7	o	2	7	o	4	4
Copying declaration, fol. 7.	-	-	o	o	o	1	2	o	2	4

Searching

Bill of Costs for the DEFENDANT in Ejectment.

	Monies out of pocket.			Agent.			Attorney.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Searching if judgment moved for, and paid - - - -	0	0	6	0	1	2	0	3	10
Common consent-rule - - -	0	0	0	0	1	8	0	3	4
General issue, engrossing and duty -	0	0	3	0	1	7	0	2	11
Paid filing same - - - -	0	2	0	0	2	0	0	2	0
Paid for issue, fol. 10. duty, and enter- ing plea - - - -	0	5	7	0	5	7	0	5	7
Paid half consent-rule - - -	0	2	6	0	2	6	0	2	6
Copy issue - - - -	0	0	0	0	1	8	0	3	4
Copying notice of trial - - -	0	0	0	0	0	6	0	1	0
Term fee - - - -	0	0	0	0	2	6	0	5	0
Letters, &c. - - - -	0	0	0	0	2	0	0	4	0

The rest of the charges for trial as
usual.

I N D E X.

ABATEMENT.

1. **O**F pleading in abatement *Page* 113
2. Form of plea in abatement, in ejectment 181, 182
2. Of avowry made upon a distress for rent or service *Page* 114
3. By 11 Geo. 2. c. 19. landlords may avow generally in replevin on a distress for rent 115
4. Attornment need not be avowed in an avowry 116

AGREEMENTS.

1. For taking an apartment 31
2. For taking a house 32, 34
3. For lease of garden ground 34
4. For purchase of a house 35
5. For building a house 36
6. For letting a ready furnished lodging *ib.*

ALLODIAL LANDS.

1. The meaning of this species of tenure 2

APARTMENT—*Agreements.*

APPRAISER.

1. The manner in which goods must be appraised under a distress 91, 101

ASSIGNMENTS.

1. Absolute assignment of leases, &c. 49
2. Distinction between an assignment and an underlease 27

ATTORNMENT.

1. The nature, and how altered 22

AVOWRY.—*Replevin.*

1. AVOWRY is in the nature of a bar, and imports a justification 113

BAILIFF—*Distress.*

BILL of SALE.

1. An absolute bill of sale 55
2. Bill of sale of a trader's effects *ib.*

BOND.

1. Of the replevin bond 106, 107

CONSENT RULE—*Ejectment.*COPARCENERS—*Estates.*

1. Of the nature of an estate in coparcenary by the common law 8
2. Of parceners by custom 9

COPYHOLD—*Estates.*

COURTESY.

1. An estate by the courtesy of England described 4

COSTS.

1. Costs in replevin 118, 131
2. Costs in ejectment 164, 185
3. Bill of costs for registering judgment in *Middlesex* 59
4. Bill of costs for plaintiff in replevin 129

5. Bills

5. Bills of costs for *plaintiff* and *defendant* in ejectment *Page* 184

COVENANTS—*Leases*.

1. An *exception* may be a covenant 23
2. A covenant not to assign, does not extend to an underlease 27
3. A covenant of renewal 28
4. Covenants to lie reserved under a power 29
5. Covenants for repairs 30

CUSTOM.

1. Estates by custom 9
2. Descents by custom 17

DECLARATION.

1. In replevin 112
2. In ejectment 181

DEEDS.

1. The law relating to *purchases* by deeds 18
2. The form of a deed poll 47
3. A deed of assignment 49

DESCENT.

1. Descent or hereditary succession, is the title whereby a man, on the death of his ancestor, requires his estate by right of representation, as his heir at law 11
2. Descent is either *lineal* or *collateral* 12
3. Inheritance shall *lineally descend* to the issue of the person last actually seized *in infinitum*, but shall never *lineally ascend* 12
4. When there are two or more males, in equal degree, the eldest only shall inherit—but the females altogether *ib.*
5. The *lineal* descendants *in infinitum* of any person deceased, shall represent their ancestors *ib.*

6. The male issue shall be admitted before the female *Page* 12

7. On failure of *lineal* descendants, or issue of the person last seized, the inheritance shall descend to the blood of the first purchaser 13

8. The *collateral* heir of the person last seized, must be his next *collateral* kinsman of the whole blood 14

9. In *collateral* inheritances, the male heirs shall be preferred to the female 15

10. Descents by custom are of several kinds, as in *Gavelkind*, *Borough*, *English*, &c. 17

11. Descents by statute are those which take place in fees-tail *per formam doni* 18

DISTRESS.

1. A distress is the taking of a personal chattel out of the possession of the wrong-doer, into the custody of the party injured, to procure a satisfaction for the injury 76

2. The several injuries for which a distress may be made, enumerated; the most common of which is non-payment of rent 76

3. By 4 *Geo. 2. c. 28.* a distress may now be made for any kind of rent in arrear *ib.*

4. A distress at common law, is in the nature of a *pledge* *ib.*

5. By 32 *Hen. 8. c. 37.* executors or administrators may distrain for rent due in the life-time of the testator or intestate 77

6. By 37 *Hen. 8. c. 37.* a husband who is lessor or landlord in right of his wife, or the personal representative of such husband, may distrain after the death of his wife *ib.*

7. By 17 *Car. 2. c. 7.* landlords may distrain *cattle* twice for one rent *ib.*

8. By 8 *Ann. c. 14.* landlords or lessors may distrain at any time within six months after the determination of the term *ib.*

9. By

9. By 4 Geo. 2. c. 28. a *mesne landlord* may distrain under a new chief lease, although the under-leases were not surrendered Page 78
10. By 11 Geo. 2. c. 19. landlords may *distrain and sell* goods fraudulently carried off the premises *ib.*
11. But a landlord cannot seize goods so removed, if sold to persons not *privy* to the fraud *ib.*
12. If goods fraudulently removed, be *bona fide* sold, the landlord shall recover *double* their value in an *action of debt* 79
13. Or, if the goods do not exceed the value of 50*l.* he may apply to a justice in a *summary way* *ib.*
14. By 11 Geo. 2. c. 19. a landlord having a right to distrain, may break open houses, &c. to seize goods *fraudulently* secured therein *ib.*
15. When the demise is not by *deed*, landlords may recover a reasonable satisfaction for *use and occupation* 80
16. The lord of a manor may distrain for rent, services, amerciaments, &c. *ib.*
17. A commoner may distrain cattle *damage feasant* *ib.*
18. The persons to whose use any man is enfeoffed of land, may distrain *ib.*
19. In what cases a distress may be made for *damage feasant* 81
20. The assignee of a rent, for *partition* or *dower*, may distrain *ib.*
21. A donor or lessor, saving the *reversion* and reserving rent, may distrain of common right; but if he part with the reversion, a right to distrain must be reserved *ib.*
22. The *assignor* of a term cannot distrain *ib.*
23. The sheriff may distrain at any house within his county *ib.*
24. A *bailiff* after tender cannot distrain *ib.*
25. A mortgagee, after notice to the tenant under a lease, prior to the mortgage, may distrain Page 81
26. A person cannot distrain for a *fee farm rent*, unless the case is brought within the statute 4 Geo. 2. c. 28. *ib.*
27. Bodies politic and corporate, may distrain for rent arrear 82
28. A husband seized of lands in right of his wife, cannot distrain where *the reversion goes to the heir* *ib.*
29. Distress may be made on a rent payable by *custom* on the day the tenant enters *ib.*
30. Of what things a distress may be made 83
31. Things *feræ naturæ*, cannot be distrained 83
32. Fixtures which go to *the heir*, cannot be distrained *ib.*
33. By 2 Will. 3. c. 5. corn or hay cut may be distrained for rent *ib.*
34. By 11 Geo. 2. c. 19. cattle on common may be distrained *ib.*
35. By 11 Geo. 2. c. 19. corn or other grain *growing*, may be distrained and taken when ripe, and lodged in the barn on the premises; or if no barn, may be removed *ib.*
36. But notice must be given, and on tender of rent and costs, the distress shall be restored 84
37. Landlords may distrain for double rent after a holding over *ib.*
38. What goods *cannot be distrained* *ib.*
39. A landlord may in general distrain whatever he finds on the premises, though not the property of the tenant *ib.*
40. But if they are the property of *third persons*, and are on the premises of the tenant in *the way of trade*, they cannot be distrained 85
41. A *gentleman's chariot*, standing at a livery stable, may be distrained for

- for rent due to the landlord of the stables *Page 85*
42. A *race horse* standing at a stable half a mile from an *inn*, may be distrained for rent due to the landlord of the inn *ib.*
43. Things distrained *damage feasant*, cannot while thus distrained, be taken for *rent* *ib.*
44. Horses and cart, where and in what cases, distrainable *ib.*
45. Money out of a bag cannot be distrained; for it has no ear-mark *ib.*
46. Of things distrainable for *damage feasant*, for tolls and for port duties 86
47. Of making a second distress *ib.*
48. *Wearing apparel* may be distrained for rent 87
49. *Way-going crops* may be distrained within the six months *ib.*
50. At what *time* a distress shall be taken *ib.*
51. In what *place* a distress may be made 88
52. A distress by the common law, being only in the nature of a *pledge*, cannot be *sold*, but must be impounded 89
53. The several kinds of *pounds*, and the method of impounding, described 90
54. In what manner a distress may be used *ib.*
55. But by the 2 *Will. & Mary, c. 5.* goods distrained for *rent*, if the tenant shall not, within *five days* after the distress, and *notice* given him thereof, replevy the same; the person may, at the expiration of the *five days*, sell the goods distrained 91
56. But they must be first *appraised* as the act directs *ib.*
57. What shall be considered sufficient notice for this purpose *ib.*
58. By 11 *Geo. 2. c. 19.* distresses for rent may be *secured* and *sold* on the premises
59. Determinations on these statutes *Page 92*
60. Of an *irregular* and *excessive* distress; in what cases the distrainer shall be a *trespasser*; and of the amends to be made 93, 94
61. The remedy for an *excessive* distress 95
62. Of *rescuing* a distress *ib.*
63. A *rescue* is where a man sets goods at large lawfully *distrained* *ib.*
64. If a distress be taken contrary to law, it may be rescued *ib.*
65. What shall be deemed a *rescue* *ib.*
66. By 2 *Will. & Mary, c. 5.* on a *pound breach*, or rescue of goods distrained for rent, the party grieved shall recover treble damages *ib.*
67. The party may maintain an action on the case on this statute, though no notice be given of the distress *ib.*
68. If distress be made after tender, the goods may be rescued *ib.*
69. By 11 *Geo. 2. c. 19.* if any tenant shall be in arrear *one year's rent*, and shall desert the premises, leaving no sufficient distress to countervail the arrears of rent; two disinterested justices of the county may view the premises, and affix fourteen days notice thereon, that they will, at the expiration thereof, make a second view; and if the tenant shall not then appear and pay, they shall put the landlord in possession, and the lease shall be void; but the tenant may *appeal to the sessions* 96
70. Precedents and directions for making a *distress*, with the forms of letter of attorney, warrant to distrain, words to be used in distraining, inventory, notice, delivery of copy of the inventory, &c. &c. &c. 97 to 103

DOWER.

1. The estate in dower 5

DOUBLE RENT—*Rent.*

1. By 4 *Geo. 2. c. 18.* if the tenant after notice from his landlord to quit, hold over, he shall pay double rent *Page 74*
2. By 11 *Geo. 2. c. 19. s. 18.* if tenant gives notice to quit, and holds over, he is liable to double rent *ib.*
3. The notice necessary to give under these statutes *71, 74, 75*

EJECTMENT.

1. An ejectment is a mixed action to recover a term and damages *135*
2. The *ancient method* of proceeding in this action, and the several cases in which it must still be pursued *135, 136*
3. The *modern method* of proceeding in ejectment *136, 137*
4. In what cases ejectment will lie, and what description of persons may bring this action *139 to 147*
5. Of what things an ejectment will lie; and therein of the manner in which they must be described in the declaration *147*
6. *Ejectment* for non-payment of rent *149*
7. How a landlord may proceed where there is half a year's rent in arrear, and he has a right to re-enter *150*
8. How a tenant may save his lease on payment of arrears, &c. *151*
9. Constructions on the statute of 4 *Geo. 2. c. 28.* *152*
10. Of the notice to quit, which is necessary to be given to support an ejectment under this statute *153*
11. Of the declaration in ejectment, and herein of the *demise, entry, and ouster* *ib.*
12. The form in which the declaration must state the requisites to this action *154*
13. The manner in which the lease, entry, and ouster, must be alledged *155*

14. Of the service of the declaration and its incidents *Page 156*
15. By 4 *Geo. 2. c. 28.* the service of the declaration must be *personal*, if possible *ib.*
16. The circumstances under which personal service will be dispensed with *157*
17. Of moving for and obtaining judgment against the casual ejector *ib.*
18. Of the defence and plea to this action *159*
19. The evidence which is necessary to support ejectment, and to prove the defendant's pleas *161*
20. What shall be considered good proof of marriage *162*
21. Whether an outstanding term can be set up *163*
22. Of the verdict in ejectment *164*
23. Of the judgment in ejectment *ib.*
24. In what case the party shall have costs *165*
25. Of the writ of execution *166*
26. By 16 & 17 *Car. 2. c. 8.* no execution in ejectment shall be stayed by *writ of error*, unless the plaintiff in error become bound for the costs *168*
27. In what cases the plaintiff, after recovery in ejectment, may bring action for the *mesne profits* *169*
28. Of bringing a *second ejectment* *171*
29. Precedents in ejectment *172 to 184*

ESTATES.

1. An *estate* in lands, tenements, and hereditaments, signifies such *interest* as the tenant hath therein; and are divided into such as are *freehold*, and such as are *less than freehold* *3 to 8*
2. A freehold estate is the *possession* of the soil by a *freeman*, and at common law, could only be created by *livery of seisin* *3*

O 2

3. Estates

3. Estates of freehold are also divided into estates of *inheritance*, and estates *not of inheritance* Page 4
4. Freehold estates of inheritance, are either inheritance *absolute*, as in *fee-simple*, or *limited*, one species whereof is the estate in *fee tail* *ib.*
5. A tenant in *fee-simple* is he that hath lands, tenements, or hereditaments, to *hold* to him and his heirs *for ever* 3
6. To constitute this estate, the word "*heir*" is necessary in the grant or donation, except in devises by *will*, or in grants to the crown, or other corporation *ib.*
7. A *fee qualified*, is such an estate as has a qualification subjoined to it *ib.*
8. A *fee conditional*, is a *fee* restrained to some particular *heir*, exclusive of others *ib.*
9. *An estate in tail*, is created by force of the statute *de donis*, and is either *general* or *special*, in *tail male* or in *tail female* 4
10. An estate of *freehold not of inheritance*, is an estate *for life* only, some of which are *conventional*, or expressly created by the act of the parties; others merely *legal*, as created by construction or operation of law *ib.*
11. An estate after possibility of issue extinct, is an estate *for life*, created by operation of law, in the manner described *ib.*
12. An estate by the *curtesy of England*, is an estate *for life*, created by operation of law, as described 5
13. An estate *for life*, created by the parties, may be *for a person's own life*, or *for the life of another*, as described 6
14. An estate in *dower*, is an estate *for life* created by operation of law 5
15. An estate of *jointure*, is constituted, and given, in the manner described, *in lieu* of *dower* 6
16. *Estates, less than freehold*, are, 1. Estates *for years*; 2. Estates *at will*; 3. Estates by *sufferance* Page 7, 8
17. An estate *for years*, is a covenant for the possession of lands or tenements, for some determinable period 6
18. An estate *at will*, is where lands and tenements are let by one man to another, to have and to hold at the will of the lessor 7
19. An estate *at sufferance*, is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all 8
20. A *copyhold estate*, is an estate *at will*, held in *fee-simple*, *fee-tail*, or *for term of life* *ib.*
21. *Estates upon condition*, are either upon condition *implied* or condition *expressed*: The first kind is where a grant of an estate has a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words: The second kind are mortgages, elegits, statute merchant and statute staple 8 to 10
22. An estate by *mortgage*, is where land is procured for money borrowed, &c. 10
23. An estate by *elegit*, is where a creditor is put into possession by the sheriff on a writ of execution, called an *elegit* *ib.*
24. An estate by *statute merchant*, is created by virtue of a bond entered into pursuant to the statute *de mercatoribus* *ib.*
25. An estate by *statute staple*, is obtained by execution on a record acknowledged pursuant to the statute of staple 11
26. Estates also may be considered solely with regard to their duration, and are, in this respect, either in *possession*, in *remainder*, or in *reversion* *ib.*

27. Estates are also considered with respect to the number and connection of their owners, and are, in this respect, either estates in *severalty*, in *joint-tenancy*, in *coparcenary* Page 8, 9

ESTOVERS.

1. *Estovers*, is a liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate 60
2. Estates are of three kinds in law, viz. *house-boot*, *plough-boot*, and *hedge-boot*, and are incident to the estate of every tenant, whether for life or years *ib.*
3. If a tenant cut down trees unnecessarily, or suffer them to fall, or if they are wind-falls, the landlord shall have them *ib.*
4. But the tenant shall have *dotards* or *pollards* *ib.*
5. The lessor may have an action against the lessee for suffering a *stranger* to cut down or to disbark trees growing on the demised premises 61
6. If part of the land descend to the tenant, he shall take *all* the estovers out of the remainder *ib.*
7. *Gleaning* cornfields is not lawful 61
8. The lord of a manor cannot take estovers in the *wastes* of the manor *ib.*

FEE.

1. Fee-simple, the nature and property of this species of estate described 3
2. Fee-qualified *ib.*
3. Fee-conditional *ib.*
4. Fee-tail 4

FEUDAL TENURES.

1. Introduction of them by William the Conqueror 1
2. The distinction between *feudal* and *allodial* property. 2

GLEANING.

1. The practice of *gleaning*, when claimed as a *right* by the poor, is unlawful Page 61

GRANTS—Leases.

HEIR—Discent.

HOUSES.

1. An agreement for letting an *apartment* 31
2. An agreement for letting a *house* 32, 33
3. An agreement to grant a lease of a house 39
4. An agreement for building a house 36
5. A lease of a house 37

INVENTORY—Distress.

JOINTURE.

1. This species of estates described 5

JOINTENANTS—Estates.

LANDLORD and TENANT.

1. The definition of these terms, and the several kinds of *landlords* and *tenants* described 1

LEASES.

1. A *lease* is a species of conveyance, usually made in consideration of *rent*, or other annual recompence 19
2. A lease must always be for a less time than the lessor hath in the premises *ib.*
3. For if a lessor grant or demise his *whole interest*, it is an *assignment*, and not a *lease*; but a court of equity will establish it during the term 19, 23
4. What 2

4. What persons are empowered by law to grant leases, and under what circumstances *Page 19*
5. Church leases, and the form and circumstances under which colleges, cathedrals, bishops, parsons, vicars, and other ecclesiastical or eleemosynary persons, any corporation, whether sole or aggregate, may grant leases *20*
6. In what cases *infants, executors, or administrators*, may grant leases *21*
7. A lease made during mutual pleasure, is, after entry, a lease for a year, and so on from year to year *21*
8. A lease may be avoided by the *entry* of the lessor, and the *latches* of the lessee *ib.*
9. A lessor for years may bring *debt* for rent against the personal representative of his lessee, after assignment of the lease *22*
10. If a lessor assign the rent reserved, the assignee may *distrain* or bring debt for the arrears *ib.*
11. A lease, or grant of *land*, passes every thing terrestrial *thereon*, or *above* or *below* the surface, from the heavens to the center of the earth, (*Sed. Vide, page 28, sect. 65.*) *ib.*
12. A lessee may avail himself of the acts of the lessor to determine the lease *ib.*
13. A lease, reserving a *pepper-corn*, shall operate as a *bargain and sale* *ib.*
14. A lease for years, "so long as both parties shall live," determines on the death of either *22, 24*
15. A lease sealed and delivered by the lessor only, is good *22*
16. Leases made good without attornment of the tenants *22 note (a)*
17. The law gives the lessee an implied right to every thing that is necessary to his full enjoyment of the lease, (*and see page 29. sect. 69.*) *22, 23*
18. A lessee cannot enter the premises during the lease, except to receive rent, to see that no waste be done, or under a covenant for that purpose *Page 23, 25*
19. A lease made without consideration, is void *23*
20. A lease of "a house with the appurtenances," will pass the orchard, garden, yards, shops, &c. belonging to it *23, 24*
21. If a lessee accept rent from an assignee of the lease, he cannot resort back to the original lessee *23*
22. In a lease with an exception, the things excepted are not demised *ib.*
23. A lessee may remove fixtures during the continuance of the lease; but cannot deface those parts of the premises which he has embellished *23, 24*
24. From what *time* leases shall commence, according to the manner of their commencement being expounded *24, 25*
25. A lease does not authorise the lessee to bring trespass till he has taken possession *24*
26. A lease may be pleaded, as lost by time or accident *25*
27. A lease, tho' good against the lessor, yet if made fraudulently, is void against purchasers and creditors *ib.*
28. A lease made by *duress*, is voidable *ib.*
29. In what cases lessees are intitled to *emblements* *6, 7, 25, 26*
30. The assignee of a lease, assigned after breach, is not liable on the covenant *26*
31. Of *covenants* in leases *26, 27, 29*
32. An *under-lease* is not an *assignment*; but what cannot be supported as an assignment, shall be good as an under lease *27*
33. A lease from the day of the date is good under a power to demise in possession only *ib.*
34. Of

34. Of *leases* under powers *Page* 27, 28, 29, 31
35. A lease from 1 *June*, for 3 years, begins on the 2d. and ends on the 1st. 28
36. A lease by tenant for life, is void on his death, though the reversioner, an infant, be named therein *ib.*
37. On a lease renewable, on claim within one month before the expiration of the term, the claim must be made within the term *ib.*
38. In what case an *agreement* shall operate as a *surrender* of a lease *ib.*
39. What shall be considered an *agreement for a lease* 29, 30
40. A proviso in a lease that the landlord shall re-enter on the tenant committing an act of bankruptcy, is good 29
41. A lessee under covenant to pay all taxes, *impositions*, &c. is not liable after assignment to the expence of building a party wall—see also page 31. *f.* 81. 30, 31
42. A lease made in 1785, for 3, 6, or 9 years, is determinable in 1788, 1791, and 1794, on reasonable notice to quit 31
43. A lease of tithes; the tithes not having been before demised, is *void*, under a power to let *so as* the *usual* rents be reserved *ib.*
44. Precedents of agreements for leases, forms of leases, deeds poll, assignments of leases, bills of sale, &c. 31 to 60
5. Of the notice to quit which may be given in the case of lodgings *Page* 73
6. Of distraining for the rent 76
7. A landlord's remedy when there are no goods on the premises 96

MEMORIALS.

1. Directions for executing memorials 58
2. Memorial of a lease for years 59
3. Memorial of a mortgage for years *ib.*

NOTICES.

1. Landlord's notice to the tenant to quit 74
2. Tenant's notice to the landlord *ib.*
3. Notice to found a demand of double rent 71
4. Notice to the sheriff when in possession on an execution 166
5. Notice of distress 91
6. Notice in ejectment 150, 153

OATH.

1. Of the oath to be administered by the constable to the appraiser in the case of selling a distress 91

ORIGINAL.

1. Of the original writ in replevin 108
2. Of original in ejectment 136, 177

OUSTER—See *Ejectment*.

POLICY of INSURANCE.

1. Form of an assignment of policy of insurance 49

POSSESSION.

1. Of possession in *replevin* 109
2. Of possession in *ejectment* 165

PRECEDENTS.

1. Of agreements for letting apartments, houses, gardens, for building

LODGINGS—*Agreements*.

1. The nature of the tenure which a lodger has in the apartments hired 1
2. An agreement for letting an apartment 37
3. An agreement for letting a ready furnished lodging 36
4. Of the demand and payment of the rent of lodgings 68

- ing and purchasing houses, and for letting ready furnished lodgings *Page 31 to 36*
2. Of leases, deeds poll, assignments, bills of sale, attornments, memorials and bills of costs, &c. 36 to 59
 3. Of notices to quit premises 74, 75
 4. For making distress 97 to 102
 5. Of replevin bonds, assignment of it, declarations in replevin, avowries, pleas in bar, writs of inquiry, and other writs and bills of costs 121 to 135
 6. Precedents in *ejectment*, as affidavits of service, judgments, notices, declarations, pleas, rules, &c. &c. 172, *ad finem*

PURCHASE.

1. *Purchase*, in a legal sense, includes every mode of obtaining lands, &c. except that by *descent* 18
2. The several modes of purchase, known to the law of *England*, enumerated *ib.*

RENT.

1. *Rent* is a species of *incorporeal hereditament*, and signifies a compensation for the possession of some corporeal inheritance 61
2. What circumstances are necessary to constitute a rent *ib.*
3. The several kinds of rent described 62
4. A rent must be reserved to the person granting or demising the lands and tenements, or to him and his heirs *ib.*
5. In what manner rent may be reserved, and by whom it is payable 63
6. If a lessor assign a rent, and the lessee attorn, the assignee may distrain for arrears *ib.*
7. Rent in arrear, at the death of the lessor, shall go to his personal representatives, and not to his heirs, (see also page 64, pl. 15.) *Page 63*
8. But if a lessor die before the day of payment, his heir shall have the rent *ib.*
9. The personal representatives of a lessee, must pay rent before bonds, &c. *ib.*
10. A bond for performance of covenants, is forfeited by non-payment of rent *ib.*
11. A *general release* of all demands, does not release rent due upon a lease 64, 65
12. A lessee who under-lets part of his term, may *distrain* or bring *debt* for arrears of the rent reserved on the under-lease, (*See qu. vide* page 65. pl. 24.) 64
13. If a husband possessed of a term in right of his wife, demises part, his executors shall have the rent during the continuance of the testator's demise *ib.*
14. A rent granted to two or more tenants in common, is several *ib.*
15. But if two or more coparceners make a lease, the rent reserved is in common 64, 65
16. If part of lands demised be recovered from the lessor, the rent shall be apportioned 64
17. The executors of a lessee who has assigned his term, are not answerable for the rent *ib.*
18. If a husband and wife demise lands, and the husband die, and the wife marry again before the rent becomes due, the second husband shall have the rent 65
19. If a lessor enter the premises, the rent is *suspended* while he holds the lands *ib.*
20. Tenants kept out of possession by civil commotion, must still pay their rent, (see also page 66. pl. 26.) *ib.*
21. A lessee is liable to *debt* for rent, though he never enters; but he cannot

- not be sued on the covenants till he take possession *Page 65*
22. If a tenant hold over after notice to quit *or* to pay such a rent, the landlord may recover the rent in an action for *use and occupation* 66
23. By 8. *Ann. c. 14.* landlords are intitled to a year's arrear of rent, in preference to any other of the tenant's creditors *ib.*
24. The determinations which have taken place on this statute *ib.*
25. By 11 *Geo. 2. c. 19.* the executors or administrators of tenants for life, may recover a proportion of the rent due at the time of their testator's or intestate's decease *ib.*
26. Rent is regularly due and payable *on the land*, if no particular place is mentioned *ib.*
27. Rents due to the crown, must be paid at the exchequer, or to the king's receiver *ib.*
28. If rent be payable precisely at a day, the *lessee* must seek out the *lessor* to pay it 67
29. The demand of rent must be made at the place where it is payable *ib.*
30. At what time rent becomes due *ib.*
31. Every quarter's rent is considered in law as a several debt *ib.*
32. The tenant has all the day until midnight to pay his rent; but he should have it in readiness before sun-set 68
33. A demand of rent is necessary before a landlord can *re-enter* for non-payment, unless waived by agreement *ib.*
34. But by 4 *Geo. 2. c. 28.* where six months rent is in arrear, and no sufficient distress, a demand is not necessary *ib.*
35. A demand is not necessary, where the remedy is by *distress*, and not by *re-entry* *ib.*
36. What entry shall be lawful *ib.*
37. The landlord must be careful not to demand more rent than is due *Page 69*
38. What shall be a good tender of rent *ib.*
39. What shall be considered as an acceptance of rent *ib.*
40. In what cases acceptance of rent shall be construed a waiver of a forfeiture 70
41. The several remedies given in law, to a landlord against his tenant, for non-payment of rent (*Vide "Distress" and "Debt"*) 71
42. On all *demises* where no certain term is mentioned, there must be six months notice to quit (*see notice to quit*) 71, 72
43. By 4 *Geo. 2. c. 28.* if the tenant, after notice from his landlord to quit, hold over, he shall pay double rent 74
44. By 11 *Geo. 2. c. 19.* if the tenant give notice to quit, and afterward holds over, he thereby becomes liable to pay double rent *ib.*
45. A parol notice on a parol lease, is sufficient; but it must be previous to the expiration of the lease *ib.*
46. *Precedents* respecting rents; as forms of notices to quit, demands of rents, &c. 75

REPLEVIN.

1. *Replevin* signifies the taking back the pledge taken on a *distress*, and counts in a re-delivery of the goods distrained to the first possessor, on his giving security to the sheriff to try the right 103
2. The plaintiff in replevin must have a property in the goods at the time of the taking *ib.*
3. An executor, and a husband alone, or jointly with his wife, may bring replevin *ib.*

4. Persons

4. Persons possessed of goods in several or distinct rights, cannot join in a replevin Page 103
5. *Replevin* lies for every species of chattel personal, which is capable of legal ownership 104
6. It lies for every thing that may be, by law, distrained; as for things wild by nature, if made tame or reclaimed; but not for animals which are only kept for pleasure, curiosity or whim ib.
7. It will not lie for things fixed to the freehold, nor for deeds and charters concerning the realty, nor for goods taken in execution, &c. ib.
8. But where *replevin* will not lie, *detinue* will ib.
9. *Replevin* is of two kinds, *viz.* by writ and by *plaint* ib.
10. The method of granting *replevin* 105
11. Out of what courts *replevin* issues ib.
12. The writ issues out of chancery, returnable into the superior or county courts ib.
13. The *plaint* is obtained by application to the sheriff or his *deputies*, and may be made either by *parol* or *precept* ib.
14. The sheriff may hold plea in *replevin*, though above 40 s. except *the freehold* come in question, or *ancient demesne* be pleaded, or the writ *de proprietate probanda* be obtained ib.
15. The suit may be removed by *pone* or *re. fa. lo.* 106
16. From what courts *replevin* cannot issue ib.
17. Of *the pledges* in *replevin*, in what manner to be taken, what persons may become pledges, and of the consequences of not taking them 107
18. By 11 Geo. 2. c. 19. In every *replevin* of a *distress for rent*, the sheriff, or his officers, shall take, in their own names, from the plaintiff and two securities, a *replevin bond*, in double the value of the goods, &c. which he shall assign to the *avowant*, if the condition be not performed Page 107
19. If the sheriff neglect to take the bond, the party injured shall have an action against him 108
20. The *original writ* in *replevin* is in the nature of a *justicies*, to empower the sheriff to hold plea in his county court ib.
21. The writ *de proprietate probanda*, issues when the defendant claims property in the goods distrained ib.
22. The *captias in withernam*, issues upon an *elongata* returned, to intitle the party replying to take a second or reciprocal distress 109
23. The writ *de retorno habendo*, is a *judicial writ*, and intitles the party to have the goods returned ib.
24. The writ of *second deliverance*, is a *judicial writ*, depending upon the first original, and is given by the 13 Edw. 1. c. 2. which, on the party *replevying*, making a second default, or where a distress, twice *replevied* is returned, ordains that the distresses taken by this writ shall be *irreplevisable* ib.
25. The writ of *pone* is used, when the proceedings are by writ of *replevin* to remove them into the superior court 110
26. The writ of *recordari*, is used for the same purpose when the proceedings are by *plaint* ib.
27. The writ of *recaption* lies where the defendant distrains again, or the plaintiff for the same rent 111, 112
28. The writ of *enquiry*, issues to enquire of the damages when judgment is given for the plaintiff or demurrer, or by default 111
29. Of the *declaration* in *replevin*, and the manner in which it must be framed 112
30. Of 113

30. Of the several pleas in replevin, viz. in abatement, bar, justification, avowry, conusance <i>Page</i> 113, 114, 115 31. Of the general issue 116 32. What matters the plaintiff may plead in bar <i>ib.</i> 33. By 21 <i>Hen. 8. c. 19.</i> every <i>avow-</i> <i>ant</i>, &c. shall recover damages and costs 34. By 17 <i>Car. 2. c. 7.</i> if the plaintiff in replevin be non-suited before is- sue joined, the defendant, on a sug- gestion in the nature of <i>avowry</i> or <i>cognizance</i>, shall have a writ of en- quiry 117 35. Of proceedings under, and deter- mination on this statute 118 36. By statute <i>Gloucester</i>, a plaintiff in replevin shall recover costs <i>ib.</i> 37. By 7 <i>Hen. 8. c. 4.</i> every <i>avowant</i>, &c. in replevin for rent, &c. shall recover damages and costs 119 38. By 21 <i>Hen. 8. c. 19.</i> every <i>avow-</i> <i>ant</i>, &c. shall recover costs <i>ib.</i> 39. By 17 <i>Car. 2. c. 7.</i> the sheriff is empowered in executing a writ of enquiry to give the <i>avowant</i> his costs <i>ib.</i> 40. By 11 <i>Geo. 2. c. 19.</i> the defendant in replevin for rent, shall recover double costs of suit <i>ib.</i> 41. Determination on these statutes 119, 120 42. <i>Precedents</i> in replevin 121 to 127 43. Bills of costs for <i>plaintiff</i> and <i>de-</i> <i>fendant</i> in replevin 128 to 135	9 <i>Edw. 2. c. 9.</i> <i>Page</i> 88 13 <i>Edw. 3. c. 34.</i> (dower) 5 27 <i>Edw. 3. c. 9.</i> (statute staple) 11 51 <i>Hen. 3. c. 4.</i> 85 52 <i>Hen. 3. c. 2.</i> 88 52 <i>Hen. 3. c. 21.</i> 104 7 <i>Hen. 8. c. 4.</i> 118 27 <i>Hen. 8. c. 10.</i> (uses) 5 21 <i>Hen. 8. c. 19.</i> 117 32 <i>Hen. 8. c. 28.</i> 20, 27, 139 32 <i>Hen. 8. c. 34.</i> 30 37 <i>Hen. 8. c. 37.</i> 71, 77, 114 5 & 6 <i>Edw. 6. c. 11.</i> (dower) 5 1 & 2 <i>Phil. & Mary, c. 12.</i> 89, 105 13 <i>Eliz. c. 7.</i> 55 27 <i>Eliz. c. 4.</i> 25 17 <i>Car. 2. c. 7.</i> 77, 86, 117, 119 29 <i>Car. 2. c. 3.</i> (frauds) 7, 21 2 <i>Will. 3. c. 5.</i> 83, 90, 93, 95 8 & 9 <i>Will. 3. c. 3.</i> (coparceners) 8 4 & 5 <i>Ann. c. 3.</i> (warranty) 6, 22 7 <i>Ann. c. 18.</i> (coparceners) 8 8 <i>Ann. c. 14.</i> (landlord) 66, 71 4 <i>Geo. 2. c. 28.</i> (will) 8, 62, 74 7 <i>Geo. 2. c. 20.</i> (mortgage) 10, 142 11 <i>Geo. 2. c. 19.</i> (rents) 6, 66, 71 5 <i>Geo. 3. c. 17.</i> (tithes) 19 9 <i>Geo. 3. c. 16.</i> (limitation) 141 14 <i>Geo. 3. c. 48.</i> 30 17 <i>Geo. 3. c. 26.</i> (registering deeds) 58 notes 23 <i>Geo. 3. c. 58.</i> (stamps) 29, 31, 37
--	---

RESCOUS.

1. In what cases a distress may be law-
fully rescued 95

SERVICE.

1. Service of declaration in ejectment
177

STATUTES.

- 6 *Edw. 1. c. 2.* (forfeiture) 5
- 13 *Edw. 1.* (ft. merchant) 10, 109

SUFFERANCE.

1. The definition of an estate at suf-
ferance 8

TENANT.

1. The signification of the word 1
2. The several species 6, 8

VERDICT.

1. Of verdict in replevin 114
2. Of verdict in ejectment 161

VERGE.

1. What persons shall be considered
tenants by the verge 8



